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and Supreme Court as Appointed by it)

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# BOOKS TO ANNOUNCE SECTION 199

## ARTICLES

- Conflicting Decrees of the Supreme Court of India Concerning Possession, Acquisition and others. By J. B. Jha. Indian Journal of Law. 1978 Dec 19
- A Conflict in the Federal Structure of the All-India High Court By A. K. Sanyal. Indian Journal of Law. 1978 Dec 19
- Interest in High Court Bench in India. By L. P. By Krishna Chandra Acharya. Indian Journal of Law. 1978 Dec 19
- The Historical Concept of Mahr in Pakistan. By M. Iqbal Khan. Pakistan Journal of Law. 1978 Dec 19
- A Letter to H. C. Lewis. By A. K. Sanyal. Indian Journal of Law. 1978 Dec 19

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By J. B. Jha

- 1. Criminal Justice in India. By J. B. Jha. New Delhi: Law Book Co. 1978. 1978 Aug 11
- 2. The Criminal Justice in India. By J. B. Jha. New Delhi: Law Book Co. 1978. 1978 Aug 11
- 3. The Criminal Justice in India. By J. B. Jha. New Delhi: Law Book Co. 1978. 1978 Aug 11

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**General P. C. (contd.)**

ing defense witness and answering without  
— held as false answer was illegal. *City*  
Held Appeal No. 12 of 1935 CH-9-7 1935  
1935 *General* 431 (62)

—§ 431 (1) (2) — Appeal taken at  
court — Powers of appellate Court — AP  
procedure of evidence 1935

—§ 431 — Operation of accused under  
§ 431 (2) (3) and § 431 (4) (5) of  
Penal Code — See rule evidence obtained —  
Appeal — Operation and answers on oath  
to High Court in appeal — Powers of  
High Court under the Licensing Act for  
purpose, that licensing license — From  
the the High Court the Licensing Department's  
proceedings — Trial proceeds could not be  
started after lapse of about 12 years which  
could only approach the limits of appeal  
1935 C

—§ 431 — See also 1935

—§§ 431 (4) (5) — Grants of orders  
prohibiting trading transactions — Appellate  
court order delivering property to accused  
when charges were in last stage of evidence  
trial — Order will not fail under § 431 —  
Order is fully covered by § 431 431 A

—§ 431 — See also 1937

—§ 431 (2) — Accused charged under  
§ 431 (2) (3) Penal Code — Denial of  
proceedings under § 431 by Magistrate —  
Order is illegal 1935 A

—§ 431 (2) — Sentence under — Chd.  
long in the punishment of criminality for  
purpose to Court — Grant of order to the  
High Court — Application by Magistrate for  
order of application regarding punishment of  
accused — Denial of — Sentence under  
is absolutely under — Sentence under  
§ 431 (2) 1935 C

—§§ 431 and 432 — Powers of Court  
under § 431 — Finding of that Court has  
431 (2) evidence might not be discussed  
1935 A

—§ 431 — See also 1935

—§§ 431 and 432 — Denial of applica-  
tion as to finding of evidence in present  
case under § 431 — Denial of evidence  
in support of accused — High Court cannot  
interfere with decision of trial court 1935 B

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AL	Other Journal	AL	Other Journal	AL	Other Journal
161	1945 AL WAC 101	171	1945 AL CI 111	181	1945 AL WAC 101
162	1945 AL WAC 102	172	1945 AL WAC 102	182	1945 AL WAC 102
163	1945 AL WAC 103	173	1945 AL WAC 103	183	1945 AL WAC 103
164	1945 AL WAC 104	174	1945 AL WAC 104	184	1945 AL WAC 104
165	1945 AL WAC 105	175	1945 AL WAC 105	185	1945 AL WAC 105
166	1945 AL WAC 106	176	1945 AL WAC 106	186	1945 AL WAC 106
167	1945 AL WAC 107	177	1945 AL WAC 107	187	1945 AL WAC 107
168	1945 AL WAC 108	178	1945 AL WAC 108	188	1945 AL WAC 108
169	1945 AL WAC 109	179	1945 AL WAC 109	189	1945 AL WAC 109
170	1945 AL WAC 110	180	1945 AL WAC 110	190	1945 AL WAC 110
171	1945 AL WAC 111	181	1945 AL WAC 111	191	1945 AL WAC 111
172	1945 AL WAC 112	182	1945 AL WAC 112	192	1945 AL WAC 112
173	1945 AL WAC 113	183	1945 AL WAC 113	193	1945 AL WAC 113
174	1945 AL WAC 114	184	1945 AL WAC 114	194	1945 AL WAC 114
175	1945 AL WAC 115	185	1945 AL WAC 115	195	1945 AL WAC 115
176	1945 AL WAC 116	186	1945 AL WAC 116	196	1945 AL WAC 116
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180	1945 AL WAC 120	190	1945 AL WAC 120		
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Age	Sex	Color	Height	Weight	Measure	Age	Sex	Color	Height	Weight	Measure
100	Male	Black	5' 10"	150	100	100	Male	Black	5' 10"	150	100
101	Male	Black	5' 10"	150	100	101	Male	Black	5' 10"	150	100
102	Male	Black	5' 10"	150	100	102	Male	Black	5' 10"	150	100
103	Male	Black	5' 10"	150	100	103	Male	Black	5' 10"	150	100
104	Male	Black	5' 10"	150	100	104	Male	Black	5' 10"	150	100
105	Male	Black	5' 10"	150	100	105	Male	Black	5' 10"	150	100
106	Male	Black	5' 10"	150	100	106	Male	Black	5' 10"	150	100
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108	Male	Black	5' 10"	150	100	108	Male	Black	5' 10"	150	100
109	Male	Black	5' 10"	150	100	109	Male	Black	5' 10"	150	100
110	Male	Black	5' 10"	150	100	110	Male	Black	5' 10"	150	100
111	Male	Black	5' 10"	150	100	111	Male	Black	5' 10"	150	100
112	Male	Black	5' 10"	150	100	112	Male	Black	5' 10"	150	100
113	Male	Black	5' 10"	150	100	113	Male	Black	5' 10"	150	100
114	Male	Black	5' 10"	150	100	114	Male	Black	5' 10"	150	100
115	Male	Black	5' 10"	150	100	115	Male	Black	5' 10"	150	100
116	Male	Black	5' 10"	150	100	116	Male	Black	5' 10"	150	100
117	Male	Black	5' 10"	150	100	117	Male	Black	5' 10"	150	100
118	Male	Black	5' 10"	150	100	118	Male	Black	5' 10"	150	100
119	Male	Black	5' 10"	150	100	119	Male	Black	5' 10"	150	100
120	Male	Black	5' 10"	150	100	120	Male	Black	5' 10"	150	100



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Author: **Barbara A. Berman**, PhD, is a professor of psychology at the University of North Carolina at Charlotte.

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# THE ALLAHABAD LAW JOURNAL 1986

1986 ALL. L. F. 1

N. N. SHARMA, J.

English Pressed and another: Petitioners v. State of U.P. Respondent

Criminal Rev. No. 1377 of 1982. Cr. 364 LRG.

(A). Petitioners of Food Adulteration Act (21 of 1954), Sec. 13(1)(a) = Sale of adulterated food — Agent and master are equally liable.

It is well established that a person may be liable for a penalty by reason of his personal violation of a fixed law or for acts done by the agent, employee or partner. Agents and the principal are equally liable in case of sale of adulterated food. AIR 1982 SC 621. See also (Para 1).

(B). Prevention of Food Adulteration Act (21 of 1954), S. 13(1)(a) — Sample received by Director on 5-12-79 — Report sent on 25-1-80 — a letter was sent to — The proprietor in person was disclosed — Held: mere non-observance of time limit for making report was not sufficient to invalidate the report. AIR 1980 SC 285. Para 1. (Para 14).

Cases Related Chronological Form

AIR 1982 SC 289	1984 Cr. 11 (12)	18
AIR 1983 SC 262	1983 All. L.J. 448	14
(1982) 1 PACC 250	(1982) 88 Pw 148 (36)	13
1983 All. L.J. 1084	1983 All. Cr. C. 276	15
AIR 1982 SC 621	1981 L.J. Cr. 1270	9

Pick Bars for Prisoners, A.O.A. for Respondent

ORDER — This revision is dismissed upon order dt. 24-7-82 recorded by Sri J. S. Shastri, Judge, V. Adulteration, Criminal Appeal No. 22 of 1980, and upheld the quantum of revision as recorded by Sri V. K. Gupta, Additional Magistrate on 7-7-81 in case No. 1753 of 1980 under S. 13(1)(a) Prevention of Food Adulteration Act. AIR 1982 SC 621.

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Adulteration Act removing each of them to ten months B. 1 and fine of Rs. 1,000 each. In default of payment of fine, default was further ordered to undergo three months imprisonment.

2. English Pressed respondent is father of Ram Anwar. The respondent deals in milk and milk under the style of M/s. English Dairy House in Sushilpura Mandi, Meerut.

3. On 3-1-79 at 8.30 A.M. Chief Food Inspector Sri B. K. Agarwal, P.W. 1 found Ram Anwar respondent selling Sapota, said Chief Food Inspector directed his driver to take sample of the nature exhibit Ka. 1 (see No. 4). Ram Anwar gave the name of the owner as English Pressed. 400 kilograms of sapota was purchased by Food Inspector for a sum of 8-90 Paise in presence of witness Krishna Gupta who made receipt exhibit Ka. 2 and memorandum form exhibit Ka. 3 was drawn. After sampling and analysis with reference to all public analysis, exhibit Ka. 4 was obtained which disclosed 65.10 per cent acid value fatty acid value 6.61 per cent. Thus there was deficiency of 4.7 per cent in non fatty acids. Necessary samples for preservation exhibit Ka. 5 was procured by Chief Food Inspector through Jany Exhibit Ka. 6. The sample was collected by Sri B. C. Saxena after perusal of all the papers, complaint was filed in the court under Exhibit Ka. 7. His name was informed about the matter. Under S. 15(1) of the Prevention of Food Adulteration Act, the sample was analysed in the request of respondent B. Director Central Food Laboratory Ghaziabad who found milk fat 0.4 per cent and milk solids of less fat 4.4 per cent and thus it was found that the sample was below the minimum prescribed standard.

4. Proceedings occurred Sri B. K. Agarwal, Chief Food Inspector P.W. 1 who procured the following documents exhibit Ka. 1 to Ka. 6 and directed the closure form.

5. In his statement, Ram Anwar admitted the sampling and his signature on the receipt.

He further stated that he did not see the shop but his signatures were forcibly procured.

8. Jagdish Prasad contended that the shop belonged to him, but the yard did not belong to him, and he did not sell the cord.

9. One Abdul Basood (D.W. 1) was summoned to testify that on the shop of respondent he had left his cord and sample was taken from it.

10. The defence was bolstered by the courts below who upheld the prosecution version.

11. On the above-stated facts controversy raised was that Jagdish Prasad was not present at the shop at the time of sampling. He did not authorize the sale of adulterated cord and no connection was possible. In this connection, it is significant to note that Sir B. K. Agarwal (D.W. 1) testified that the shop from which sample was seized, belonged to Jagdish Prasad as was proven by Ram Katar Namak. In his statement Jagdish Prasad admitted that the shop belonged to him although he denied that he sold or dealt in cord. D.W. 1 Abdul Basood contended that the shop belonged to Jagdish Prasad who was not present at the time of sampling. Ram Katar was there. He further contended that the milk and cord were sold at the shop. Under these circumstances, the finding, if fact that Jagdish Prasad was the owner of the shop and Ram Katar was the salesman cannot be disturbed. It is well established that a person may be liable for a penalty by reason of his personal violation of a food law or for sale done by his agent, employee or partner agent and the matter will not equally fail in case of sale of adulterated food. *State of Punjab v. State of U.P.*, AIR 1961 SC 1011. In this connection a rule is laid out.

12. The next controversy was that the report of Director of Central Food Laboratory gave the number of sample as D/W 1/1/79. Sample No. CP/1475/1979. According to report of public analyst number of the sample was CP/1475/79 and code number K-4. Sir Justice Abidur Rahim Muzaffar Beg who was the sample to Director Central Food Laboratory with the letter dt 26.11.79 gave number of the container as 84/03/79. He did not clarify that out of the sample sent for comparison to the director was intact. Under such circumstances, the controversy was

centered on the finding of a reliable, single sale (Sample No. State of U.P. 1981 AIR 1015, 1016) and AIR 1981SC 1011. It appears that the sale, the report of the Director made, in light of the sample from which it was seized, had no occasion to compare, the facts of the case. Thus the mandatory provision of S. 4(1) of the Food Adulteration Act applied with effect.

13. In the present case, the report of Director dt 27.12.80 directed the sale, the sample and the particular of the report, letter of the period related with the specimen impression of the cord was of 1980 or 1981.

14. Thus there is nothing wrong about the sample sent to Director's lab. It was tested in a no control analysis. They criticized, when they gave with letter dt 27.12.80 to the Director Central Food Laboratory, that it was in Sir Justice Abidur Rahim Muzaffar Beg's report that the sample was not a genuine one. The letter dt 1981. It is further significant to note, that such statement was never raised before, in any of the Magistrate's, learned Sessions Judge, rightly found that it was, was some, report, letter of the number of the figure, 80 instead of 81 which was a copy, the, had no such opportunity to get it independently, found impossible. Naturally, it is clear that D.W. 1 has been misled, it will not lead to the conclusion that the, was something wrong, if the sample sent to Director's lab, the sample sent to Director was not the same, which was, and from the shop of Jagdish Prasad. Under such circumstances, it is not possible to get by the discrepancy.

15. The next controversy was that the sample was recovered by Director on 1.12.79 and he submitted his report on 27.12.80. It was beyond one month as laid down in S. 11(2) of Prevention of Food Adulteration Act which provides a period of one month prior to submission of such report specifying the result of the analysis. This rule was held mandatory in *Director of Food v. State of Punjab* (1982) 1 P.A.C. 360.

16. However, the material facts departed from in *Tate & Lyle v. State of Madhya Pradesh*, AIR 1981SC 277 which was decided with approval of the rule laid down in *Director v. Madhya Pradesh Corporation*, AIR 1981SC 871 as mentioned below —

There are no ready tests or standards furnished to determine whether a provision is mandatory or directory. The broad purpose

of the statute is important. The object of the particular provision must be ascertained. The last sentence of the two is most important. The weighing of the consequences of holding a provision to be mandatory or directory would not arise until after an interpretation of the very question whether the provision is mandatory or directory. Without the design of the statute, it is as useless as a provision of public manner law the enforcement of a particular provision tending to no issue will tend to define that design. The provision must be held to be directory, so that proof of negligence is addition to non-compliance of the provision is necessary to establish the act completed. It is well to remember that even after many rules, though couched in language which appears to be imperative are no more than mere suggestions to those entrusted with the task of administering statutory trusts for public benefit. The negligence on those to whom public duties are entrusted cannot be statutory interpretation to allow to persons public mischief and cause public inconvenience and defeat the main object of the statute. It is as well to remember every presumption of a parent water which an all joint, he does it not the presumption of a period of business with parties consequent of the act it not there water that period.

Applying the same rule in the instant case I find that according to report of the Director the mere fact that the fish was not able means that one month has not caused any prejudice to the parties. So the mere non-compliance of the provision was not sufficient to establish the alleged report in this case.

15. In the view of the matter I do not find any weight in these statements. In the provision is upheld. Statutory cannot be regarded as a question. Reason accordingly caused means order of 12+ 10 is hereby vacated. Let my sentence be voided in that but bonds and taken into custody to serve out the sentence awarded to them. There had bonds are vacated.

Revised Decided

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1990-1991, L 33.

A. P. DIXSITTA, J.

*Magbool Almostly, Petitioner v. Bhure Lal and others, Opposite Parties*

*Contempt Pet. No. 261 of 1990, D. 27/1990*

**Contempt of Courts Act (19 of 1951), ss. 2(b), (2) — "Contempt" — Meaning of — Application under S. 12 against Director of Enforcement Directorate and Assistant Director, Enforcement Directorate for disobeying order of High Court to release passport and certificate issued from compliance — Conditions imposed by order not fulfilled by compliance himself — No time limit fixed by order for release of documents — Officers compliance against act/policy of contempt — Application with alternative orders — Exemplary costs awarded (Civil P.C. 15 of 1960), ss. 23 and 23 A.)**

Where an application under S. 12 was filed against the Director, Enforcement Directorate and Assistant Director, Enforcement Directorate, on ground that they disobeyed the order of the High Court to return the passport and the air ticket issued from the applicant to enable him to pay a sum to Singapore for the compliance imposed by the order had not been fulfilled by the applicant and a sum issued was held in the order of the High Court for the return of the documents, which the opposite parties could not be charged with breaching the order of High Court and could not be said to be guilty of contempt. The contempt petition has been rejected by the applicant with the alternative orders as stated up allegations to harm and cause harassment to the opposite parties with a view to achieve his object of getting his passport and air ticket returned. The allegations and imputations on the parties are reckless, malicious and false. Such a petition deserves to be dismissed. It would be totally unjust if a person concerned for game and achieve his goal by making malicious allegations against public servants who are performing their duty within their rights. Of course if the allegations of contempt are proved to be true the dignity of High Court has to be upheld and High Court will not

hesitate from dealing with the contemners with iron hands and taking appropriate action against him, but as a rule like the present where the allegations and imputations of the applicant have been found to be untrue reckless, malicious and false High Court has to protect the public servants against whom such allegations are made and they are entitled to be compensated pecuniarily for the harassment. Exemplary costs amount of Rs. 5000 are to be paid to opposite parties pecuniarily as equal compensation against the applicant for being paid to opposite parties. (Para 9 and 10)

**Order: Costs for Applicant Standing Counsel for Opposite Parties.**

**ORDER.** — The instant application under S. 12 Contempt of Courts Act read with Civil P.C. has been filed by one Sri Magbool Almostly for taking action against the opposite parties.

1. Sri Bhure Lal, Director, Enforcement Directorate, New Delhi 1 for O. M. Choudhary, Assistant, Director, Enforcement Directorate (P&A), Varanasi and S. M. H. Khan, Enforcement Officer, Enforcement Directorate (P&A), Varanasi for the disobedience of an order dated 24th May 1990 passed by Civil Mag. Wry No. 1740 of 1990 and also for contempt made by opposite parties 2 and 3 thereby lowering down the dignity of the Court according to schedule as much as the position of the applicant. The prayer under petition however is.

It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to return the opposite petitioning with the Passport and Air Ticket of the applicant on or before 2nd July and permit the opposite parties for continuing the workings of this Hon'ble Court with by not complying with the order dated 24.5.1990 and also for making suitable remarks with a view to uphold the authority of this Hon'ble Court.

2. In brief the facts as disclosed in the petition cover which given rise to the filing of the said petition, passing of an interim order on 24.5.1990 and then immediately the filing of the present application. In the year 1990 the applicant went to Singapore on an Indian

passport and he started some business there. After the independence of Singapore the person living in Singapore continuously since 1963 were granted the status of 'permanent residents' of that country and were also permitted to own their original residences. The person who was residing in Singapore since 1963 also became a permanent resident of Singapore and also obtained his Indian nationality. As a permanent resident of Singapore the applicant could, as one of the powers of Singapore authorities, engage himself in business and could also acquire property there. The applicant is a partner of M/s. Woodward Almond Oudhoo Brothers who, as deal in ground rent business. According to the law of Singapore a permanent resident must remain for a permanent resident of that country of Singapore in any other country and not exceed for Singapore authorities for a period of more than one year. The applicant obtained an Indian passport issued by the Indian high commission in Singapore and also entry permit, valid up to 17.10.1985 issued by the authorities of Singapore to re-enter India. The applicant visited India on 12.1.1984. After this visit also India the person wanted to go back to Singapore on 28.12.1984 but when he was finding a place for his permanent residence by the officials of the Enforcement Directorate in Bombay. Nothing interesting was found from the possession of the applicant yet the applicant was arrested and his passport and the assets were seized by the authorities of the Enforcement Directorate.

3. On 19 application being made by the applicant to the Enforcement India the Chief Judicial Magistrate (J.M.) Alahabad on 12.1.1985 with the conclusion that the applicant had not been India during the pendency of the case. The applicant's efforts to get back his passport and the assets back from the Enforcement India. The applicant succeeded in securing an order from the Magistrate to issue Singapore, but two months later such an order was again set through by the P. Additional District Judge, Alahabad.

4. Feeling aggrieved and perhaps also aware of the fact that after 17 years' imprisonment the applicant was to return on 17.10.1985 the applicant filed writ petition No. 7193 of 1985 in the Court on 17.10.1985 and with the following prayer order was passed:

The Director of the Enforcement Directorate (ED) the respondent shall cause the passport and the assets back issued from the petitioner to the petitioner or at its suitable time respondent to pay a sum to Singapore. The petitioner shall be free to travel within one month from the date of the return of passport or later by the Director. Further the Director shall not bind even within the passport or the assets or to the petitioner unless and until the petitioner intimates a sum of Rs. 10,00,000 (Ten lakhs) to him in the name of the ED (ED) Singapore. The respondent shall be free to return the passport and the assets back to the petitioner from the Director. The respondent shall not bind the petitioner to return the assets back. The petitioner's passport shall be impounded.

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5. It is stated in the petition that after obtaining a certified copy of the order in order to the applicant tried to obtain a copy of party 1st affidavit, but it was not possible to do, nothing could be done. The applicant then visited to Delhi and tried to contact with opposite party 1st affidavit, but the respondent did not give the copy of the order to the applicant. The applicant then contacted party 2 of the High Court where he had come in connection with some other case and tried to come upon him the certified copy of the High Court order on him. The opposite party 2 however refused to accept the copy of the order and even if made the following remarks:

Copy has not been kept High Court because the same has not been duly recorded for the copy.

Thereafter it came an application duly with the original certified copy of the High Court order dated 24.1.1985 and the original Bench Commission of Rs. 50,000/- were presented to opposite party 1 at Delhi who forwarded the same to opposite party 2 with some other orders for compliance of the High Court order. A further application on 7.6.1985 the applicant sent his registered post copy of the writ petition, the order dated 24.1.1985 and the Bench Commission of Rs. 50,000/- of Delhi.





in favour of the Director of the Endowment Department (Ditto). It may be assumed that there was no time lost filed in the wrong side of the High Court for the return of the documents and hence the opposite party could not be charged with laches. The return of the Court and more so what the conduct of the said party was not imputed to the applicant before 27/1/1954.

5. From the above narration of facts I derive some idea by conclusion that the opposite parties did not lose the return order dated 21/1/1954 passed by the Court and are then not guilty of any contumacy. It is also fully revealed that the return process has been moved by the applicant with the utmost haste on conduct up allegations to facts and cause documents to the opposite parties with care to achieve his object in getting the property and an order returned. The allegations and imputations in the petition are reckless, baseless and false. Such a petition deserves to be dismissed. It would be a sad day when a justice succeeds in his cause and is later on penal by making some odd allegations against public servants who are performing their duty within their right. Otherwise the allegations of contumacy are bound to be, into the dignity of the Court has to be upheld and the Court will not become loose, flaking, with the petitioner with one hand and taking appropriate action against him with a other. He, the petitioner, filed the allegations and imputations of the applicant have been found to be untrue, reckless, baseless and false. The Court has to protect the public service against those with allegations are made and they are entitled to be compensated suitably for the harassment it entails. The proper, in award exemplary damages the applicant is being paid to opposite parties 2 and 3 personally.

6. While I have come to the conclusion that the petition must be dismissed with costs I would like to observe that a resolution in the Board of Charge filed after the formalities have been completed and does have been paid the property and the all interest of the applicant be returned to him. Learned counsel for the opposite parties and the opposite party 2 himself frankly inform the Court that the formalities take only 24 hours. But this is done by 1/1/1954.

7. In the result the petition fails and is

dismissed with costs with 1/1/1954 and Rs. 1000/- to be paid to opposite parties 2 and 3 personally in equal shares. In addition the applicant shall also pay the imbursements incurred by opposite parties 2 and 3 during case stay at Admitted which is reported to be Rs. 104-00/10 = 1/1/1954. The learned Standing Counsel will prepare a bill of expenditure of opposite parties 2 and 3 and the learned counsel for the applicant will make payment on the bill from within 21 hours to the Standing Counsel. The applicant is also bound to pay Rs. 1000/- in costs to the learned Standing Counsel personally, in behalf of the opposite parties. After the payments are made by the applicant the learned Standing Counsel will make a receipt for the amount reported by him as costs and for the sums actually paid by him on behalf of opposite parties 2 and 3.

Petition dismissed.

1954 AIR L J 8

N. S. SETHI J.

*Min. Pdt. W. Dutt, Petitioner v. Ajit Dutt and others, Oppos. 2 and 3.*

*Transcript of Vol No 1 of 1954 D. 1/1/1954.*

*Case Section Act (1914), S. 19(2) - Expenses - A law for the time being in force - Custom amongst Chinamen - Immense immenses - Not governed by any custom - Adopted child born and raised property of the adopter father.*

Any custom pertaining to adoption immenses immenses in prevailing amongst the Indian Chinamen as immenses governed by the Bengal Act and Andhra Civil Code Act cannot be regarded as a law for the time being in force as immenses by S. 19(2) of the Government Act and adopts any such custom prevailing in any system of the Chinamen community in the form, the immenses immenses it is part of the immenses it is to be governed by the immenses immenses in the Government Act and for that purpose any custom or rule of parties, equity and good immenses would be immenses. So far as the State of Uttar Pradesh is concerned immenses immenses of Indian Chinamen is governed by

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the provisions contained in the Indian Succession Act 1925 and any custom prevalent in the State or tribe regard would for purposes of succession be irrelevant.

(Para 13-16)

The local customarily contemplated by S. 25 of the Act with regard to intestate succession did not the question of intestate succession. This adoption was contained in S. 6 of the defendant in the direct line of the natural father. Therefore, children in S. 27 of the Act will not concern the case of an adopted child who cannot be described as being descended of the person adopting him. (Para 18)

Therefore the right to succeed in the properties left available by a Christian widow is governed not by any custom largely governed by the provisions contained in the Succession Act. Further, under the provisions of Succession Act a child adopted by a person for being brought up as a son, does not inherit the properties left by him. (Para 20)

(iii) **Christian Law - Custom - Adoption - No person is chosen being law of descent through adoption.**

There is neither any Christian Law nor is there any legally recognized custom prevailing amongst Christians which entitles a Christian to adopt a child in the sense of giving to such child the privileges and status of natural child. A child who has been adopted by a Christian for being brought up as his son does not become entitled to the privileges of a natural son, and he does not become entitled to succeed to the properties. (Para 21)

Cases	Refered	Chronological	Para
AIR 1978 SC 223			23, 24
(1980) 34 Cal 198 (O&A) 14			14
AIR 1949 AG 134			19-25
AIR 1912 PC 14			21
(1981) 52 F 1100 (ad App 19) IPO			25
G O 789 (Lopes v. Lopes)			24

S. N. Verma, K. N. Thakur and P. K. Mishra for Plaintiff; Srihar S. R. Mishra, M. Kaur, S. S. Bhargava, G. N. Verma and B. N. Mishra for Opposite party.

**ORDER.** - Cost remitted as the controversy not concern the estate of late

Smt. Meera Devi. Cost value of late Smt. E. E. Devi who died previous and testament in Adalat Indore on 12/10/1948.

2. On May 3, 1948 Smt. Meera Devi (hereinafter described as Meera Devi) commenced a petition (Tombstone Case No. 7 of 1948 before the Court praying for the grant of Letters of Administration in respect of the estate of the deceased, specified as Jankar. For the petition, according to her, late Meera Devi, apart from the petitioner, left behind three brothers, two and a half sons and a son of late. She came to know that Smt. Meera Devi, one of the Smt. E. E. Devi's brother, Jankar Devi, had claimed herself to be the adopted son of late Meera Devi and her husband E. E. Devi. Filed a suit in the Court of Meera Devi, Adalat Indore No. 10 of 1948. After the Jankar Devi and another, praying for a declaration, injunction restraining the defendants of their suit from changing or sharing the share of one of the properties comprised in the estate of the deceased, late Meera Devi. According to the petitioner there is no provision for adoption either in the Christian Law or in the Succession Act and the adopted status of Jankar Devi by S. E. Devi and late Meera Devi is absolutely invalid, and that she being the next of kin of the deceased, is entitled to maintain the petition for the relief claimed by her. The petitioner also requested that notice of the petition be issued not only to the defendants of her suit named by her but also to those others including Jankar Devi who, according to her, were, in all circumstances, of the case proper parties in these proceedings.

3. Late Jankar Devi, described in the petition as one of the proper parties, filed a counter affidavit (page No. 4) denying the claim of the petitioner. She further claimed that she alone proposed mentioned in Affidavit to the petition, namely, the Plaintiff Jankar Devi (the deceased) for a sum of Rs. 10000, was held jointly by her and late Meera Devi. The amount due under that receipt was payable in either of them or to the survivor. According to her, said property, belonged to her and could not be made the subject matter of their testamentary proceedings.

4. On April 20, 1948, a formal and also

his *de iure* naturalistic paper No. 36, in that article he contended that even after his birth he was adopted by and baptized at the age of 16 by E. E. Datt and Sam. Maud Datt in accordance with the custom of adoption procedures, among Indian Christians, and in the family of his. Sir E. E. Datt and Sam. Maud Datt have made affidavits and sworn declarations in the proceedings. In para 11 of his deposition, Agt Datt went on to assert that his grandfather Late Raj Sahib Khan Datt owned considerable property and the family had a custom whereby two persons was in accordance with the Hindu Law and custom got as there is their father's property. His grandfather's property Hindu customs of extended family and were governed by Mitakshara School of Hindu Law and he had adopted both a legitimate adopted male child. This child, after conversion turned into a wife then their adopted son came later in the name of a spouse, unlike common in Christians, may be regarded as change in mode of marriage. He, therefore, concluded that in his opinion, this is still, prima facie the case of Sam. Maud that the partnership is merely in a case of non-compliance with the Law, but Adoption is not complete, until, it is left to the court.

4. In his naturalistic affidavit paper No. 36, paragraph 17, M. Datt stated that the law of the country does not recognize any notion of adoption among Christians. He denied that any such notion of adoption (unlike other amongst both in Christians or in the family of Late Sir E. E. Datt) according to him, Agt Datt was never adopted by Sir E. E. Datt and Sam. Maud Datt and that the long time after husband legal representatives of the deceased in accordance with the partnership formed in the Agreement Act is entitled to take over the business of Administration sought by her. The plaintiff also stated that the sum of Rs 10,000/- which the trust deposit is kept standing jointly in the names of Sam. Maud Datt and Asha Varier has been made out of deposit from rights paid over to Sam. Asha Varier. She has three children, the object was also stated by Sam. Asha Varier.

4. Dr. Sir D. M. Khan a one of the petitioners who was appointed opposite party No. 1, addressed a letter (paper No. 36) to the Deputy Registrar of the Court informing,

that that was about his birth at Kumbh Nagar Hospital, the son of Sir and Sam. Archibald Datt was taken in adoption by Sir and Sam. E. E. Datt as their own son in his privacy, and his Agt Datt was born in all fully and spiritual aspects, with a wife in his life and legal rights, dependent on Sir and Sir Archibald Datt and his wife, Sir and Sam. Datt on the one hand and Sir E. E. Datt and his wife Sam. Maud Datt who, made out the will that Sir Agt Datt was the only son of the deceased unlike the defendant's contention and since the rule of succession of intestate and since the property left by Sam. Maud Datt.

5. And he went on to state that the proceedings in Testimony (Case No. 7 of 1994) were conducted in a way, and these proceedings were conducted as Testimony No. 1 of 1997. The Court then on the basis of the pleadings of the parties stated following, but since on the case -

1. Whether Sir Agt Datt was adopted by Sir E. E. Datt under the Christian Law?

2. Whether Sir Agt Datt was adopted in accordance with the Law of adoption?

3. Whether the partnership, adoption under Christian Law, is binding on the law of the Court?

4. To what extent, the plaintiff can rely?

8. In the present case, each of the parties Late Sir and Maud Datt was deceased by Section 24 of the Indian Succession Act. Inasmuch as the deceased was not married by her husband the sum, mentioned in Clause 1 of her Will, 279 which says, donor that in such a case, the ultimate sum of the estate is to be committed to the person of persons who would be beneficially entitled to the estate according to the rules of distribution of intestate's estate. The sum of the personal estate of deceased is the deceased's estate mentioned in her Will and any legal document or in that estate, she being the owner of the estate, and it is her sole and entire estate, and according to the rules of distribution of intestate's estate, the sum of her estate of the Indian Succession Act. The contention of Sir Agt Datt on the other hand is that as he was the adopted son, Maud Datt, he was entitled to succeed to the estate left by her in

accordance with the custom prevailing amongst the Indian Christians as close to the family as is practicable. *Maud Datt* belonged and the partition was not beneficially vested in the latter, but by the deceased she further intended that having been adopted by her *Maud Datt* as a son, he was in the position of her son and was under Section 21 of the Indian Succession Act entitled to succeed to her estate in preference to the persons who were merely a part of the deceased.

It is well that to note that the central controversy as to be resolved in this case is regarding the right of *Age Datt* to succeed to the properties left by her *Maud Datt*.

18. Whereas according to the previous decision in an Indian Christian dying testate is governed by the provisions contained in the Indian Succession Act the case of *Age Datt* is that as her case such success is governed by the custom prevalent in practice to which she belonged in support of the proposition that in the instant case such estate is not governed by the provisions of Indian Succession Act. Learned counsel appearing for *Age Datt* raised questions of the Court to Section 21 of the Indian Succession Act which runs thus:—

21. Application of the part —

1. This part shall not apply to any property acquired before the first time of January 1880 or to the properties of any Hindu, Mohammedan, Buddhist, Jaina or Jew.

2. There is provided in sub-section (2) as to any other law for the time being in force the *provisions of the law shall continue to be the law of India in all cases of marriage*

and argued that the expressions, *any other law for the time being in force* used in sub-section (2) quoted above, includes within its scope not only marriage law but the customary law applicable to concerned parties. Accordingly to state the plaintiff is as directed by the court to substantiate that there is a custom prevailing amongst Christians in the family in which he is *E. Datt* and *Jane Maud Datt* belonged succeeded to her *Maud Datt* will be governed by the custom and not by the provisions contained in Indian Succession Act. The relevant distribution of estate will have to be applied out in the light of such custom and in the regard rules for distribution

of estate contained in the Indian Succession Act would not at all be relevant.

19. In order to substantiate the plea that the custom for Indian Christians prevailing in the E. D. Datt's family is to be applied with the expressions, *any other law for the time being in force*, used in Sec. 21(2) of the Indian Succession Act need that the rule, *customs* contained in the Indian Succession Act stands excluded from its scope appearing for *Age Datt* relied upon the provisions contained in Sec. 2 of the Punjab Laws Act (Act 3 of 1872) and corresponding provisions contained in Section 27 of the South-West Province Regulations<sup>1</sup> of 1901 which stipulates:—

Customs regarding inheritance, dowry, adoption, guardianship, marriage, family relations and legacies prevail in any independent or institution, the rule of decision shall be:

1. In any custom of any body or class of persons which is not contrary to public policy and good conscience and has not been declared to be void by any competent authority.

16. The *Mohammedan law* in cases where the parties are Mohammedans and the Hindu law in cases where the parties are Hindus except in so far as such law has not been altered or abolished by legislative enactment or superseded by the provisions of this Act, or has been modified in any such manner as is referred to in the preceding clause of this Section.

*Indian Succession Act* *provisions* *customs* *prevail* *subject to any* *subsequent* *legislative enactments* *on the subject of inheritance* *adoption* *etc.* *legislation* *modification* *abolition* *of any body or class of persons* *which is not contrary* *public policy* *and good conscience* *or which has not been declared* *void* *void by a court of law* *and* *except upon the result of law* *to decide the dispute among* *believe it in accordance with such custom*. Accordingly, if *Age Datt* succeeds in establishing the custom set up for her, it would have the force of law and according to Sec. 21(2) *Maud Datt* estate would be governed by such custom and not by the provisions contained in the Indian Succession Act.

22. I studied the evidence placed by the learned counsel on the part of *Age Datt*.



There was neither advertisement nor consideration by the learned judges of the Calcutta High Court that not even whether the defendants in *Chowdhury* are governed by the provisions of the Bengal, Agave and Assam Civil Courts Act or by any other regulations containing provisions similar to the Preamble Laws Act (Act 4 of 1970) and finally that provisions regulations (1 of 1961) giving legal recognition to such persons concerning succession, inheritance, adoption and in other circumstances. I am, on the basis of *Nabey* (Act 1961) and *Supriya* (Act 1961) that any person providing an advertisement of *Chowdhury* would extend the rule of succession laid down in Indian Succession Act 1925.

15. In this connection my attention was also drawn to a decision of the Supreme Court in the case of *Asanthaprasad v. N. K. Chatterjee* A/S 1970 SC 223 in which the court was called upon to consider the question as to whether the doctrine of joint obligation was applicable to *Yamun Tandi Chatterjee of Chital Talai* in *Karala* who were a group of persons, informants and by means previously *Mahabharata* (Section 10) Hindu Law. In that case the controversy was not as to whether succession of *Yamun Tandi Chatterjee* was to be governed by the custom prevailing in such community, or by the Indian Succession Act. In paragraph 1 of the judgment the learned judge of the Supreme Court pointed out that such a practice had been recognized in a number of cases spread over a long period and that it had also required legislative recognition by Section 3(3) of the Indian Christian Succession Act of 1925 which provided that nothing contained therein was deemed to affect recognition of the property of the *Yamun Tandi Chatterjee of Chital Talai* who followed Hindu Law. The controversy, before the Court was whether doctrine of joint obligation which was deemed to be a partly religious doctrine pertaining to Hindu would still be applicable to such *Chatterjee* who were in the status of succession and inheritance governed by the Hindu Law. In this connection the Court concluded that:—

For the reason already given we are of opinion that the doctrine of joint obligation is not merely a religious doctrine but has passed into realm of law. It is an integral part of *Mahabharata* culture of Hindu Law which the

case from the very essence of their birth acquire along with their being an ancestor in the joint property. The doctrine is in consonance with justice, equity and good conscience and is not opposed to any principle of Christianity. It is for this reason that the High Court in spite of its conclusion that the doctrine of joint obligation is applicable to the community of *Tandi Yamun Chatterjee of Chital District*.

In *Asanthaprasad* case (supra) the custom regarding succession amongst *Yamun Tandi Chatterjee* had been followed with legal efficiency and to such extent contained in the *decrees* made in the case on the subject *Asanthaprasad* above. Secondly, the Supreme Court applied the doctrine of joint obligation to *Yamun Tandi Chatterjee* not on the ground of custom or community law but on the ground that such persons were along with the community was perfectly in accordance with the principles of justice, equity and good conscience. There already explained that applicability of the principles of justice, equity and good conscience cannot be put in question by Section 24 of the Indian Succession Act 1925 because it is regarded as a law for the non-Hindu law.

16. In view of the aforesaid decisions, I am clearly of opinion that as far as the facts of *State* *Prokita* concerned, the succession of *Indian Chatterjee* is governed by the provisions contained in the Indian Succession Act 1925 and any custom prevailing in the state in this regard would for purpose of succession be irrelevant.

17. May observe therefore that while for consideration of this case, it whether according to the rules of succession and distribution of property of an intestate as laid down in the Indian Succession Act, in person who has been adopted by the deceased by being brought up in a line it existed in the property of the deceased (Part D) of the Indian Succession Act deals with the subject matter of community which expression has for the purpose of the Act been equated with the expression *family* and has been defined by Section 24 of the Act that:—

*Family* or *community*, in the natural and ordinary sense of the word, means the state of common residence

Such community or community



People. Their matrimonial status after divorce governed by the Hindu law of the father of Hindu. After their conversion to Christianity, they matrimonial arrangement was made in pursuance of the same rule. Accordingly, after Sir E. E. Dalrymple died in 1940, the son, Apt. Dan became, in accordance with the rule of succession under the Mitakshara and that introduced in Bombay, after "Mugl" Dalrymple, of E. E. Dalrymple, the primary beneficiary of the trust despite conversion to Christianity, the Hindu law which Sir E. E. Dalrymple continued to be, at the major or dominant, governed by the law which was applicable to it prior to its conversion.

15. In terms the submission concerned a Hindu undivided family, Apt. Dan, by a Devout British citizen of that class in the case of *Hindu, Karam Singh v. Jaganath Chandra Bhatnagar* AIR 1940 AC 514 wherein the defendant claimed the right to succeed to the estate left by Mrs. Bhatnagar, Hindu Karam Singh, widow of Karam Singh as her adopted son. It was argued that prior to his conversion to Christianity, Karam Singh was a Hindu by law, and as such was in the status of adoption governed by the customary law (originally adopted as prevailing in Gujarati law). The defendant claimed that even after conversion to Christianity, the family of Karam Singh continued to be governed by the same custom. While repelling the submission, the learned Judge constituting the Bench relied upon the observations made by the Privy Council in the case of *Karam Singh v. Dharma Singh* AIR 1932 PC 14. It had said that "It is to be observed that —

But upon accepting these allegations for the sake of argument as true, the question still remains as to whether it can be held that even after Mr. Karam Singh was converted to Christianity he continued to be governed by the custom prevailing among the Hindus of the district Gujarati. It seems to us that the argument that succession to the estate of an Indian Christian can be governed by the rule applying to the converts to which he belonged before his conversion to Christianity is not sound.

16. In this case, the matter is one of opinion that is not open to Apt. Dan's claim that despite conversion to Christianity, the

family of Sir E. E. Dalrymple remained Hindu in the matter of adoption and the custom governed by the Hindu law, that is the law which prior to its conversion to Christianity, was applicable to the family.

17. Learned counsel for Apt. Dan relied upon a decision of the Privy Council in the case of *Abdullah v. Abdullah* 1964 AC 119. There had Apt. Dan which decision indicated, when trusts were made by the Sepoy Court in the case of *Abdullah v. Mr. Chatterjee*, AIR 1915 AC 125 and extended that in case of converts to Christianity, that Hindus in a sense to which conversion does not lead to, which they would in the matter of succession law to be governed. They said if they like, others to the rule of succession in which they were being governed prior to their conversion. There was then nothing wrong, if the succession of E. E. Dalrymple, despite their conversion to Christianity, should be governed by the rules of Mitakshara. Mr. and Mrs. E. E. Dalrymple were in accordance with the rules of Mitakshara competent to adopt Apt. Dan and Apt. Dan was, in their adopted son, entitled to inherit their property.

18. The decision of the Privy Council in the case of *Abdullah v. Abdullah* implied relied in particular to succession of Indian Succession Act 1925 and Indian Succession Act 1925, when there was no majority law of succession for Indian Christians. The learned Judges of the Privy Council in para 129 of the report observed that —

Such then being the state of the case as far as the Hindu law is concerned, we must now consider whether there is any other law which determines the rights over the property of a Hindu becoming convert to Christianity. The law too, Act clearly does not apply (the parties having consented to be Hindu) to rights, but looking to the regulations their Lordships think that so far as they prescribed that the Hindu law shall apply, to Hindus and the Mohammedan law to Mohammedans (that must be understood) so far as Hindus and Mohammedans not be back exactly, but for rights also. They think therefore that the case will be decided according to the regulation which prescribes the custom shall be something in equity and good conscience. Applying the rule to decision of the case, a



cases to which Lordships that the same which appears to have been passed in India in these cases and to have been adapted in the present case, of referring the question to the usage of the place in which the subject may have attached himself, and of the family to which he may have belonged, has been more extensive (both as regards and good conscience). The profession of Christianity releases the converts from the influence of Hindu law, but it does not of necessity involve any change of the right or extent of the control in matters with which Christianity has no concern, such as the rights and interests in and the powers over property. If the convert though not bound strictly to profess either by the Hindu law or by any other positive law, may by his course of conduct show he conversant has chosen by what law he regarded to be governed as to these matters. He may have distinguished by attaching himself to the law which was then current has adopted and acted upon some of law, or by having himself observed scrupulously usage in customs and acting in conformity therewith that the rights and interests in the property and his powers over it should be governed by the law which he has adopted, or rules which he has observed.

It is absolutely clear that stereotyped observations have been made by the Privy Council in the cases where there was no law governing the rights over the property of a Hindu but a compromise of Christianity and the matter had to be decided as governed by the regulations in accordance with the principles of justice, equity and good conscience. It was in such a case that Privy Council held that nothing could be more just than the rights and interests of a convert as his property and his powers over it should be governed by the law which he had adopted or the rules which he had observed. Certainly these observations were not made in, on the ground of justice, equity and good conscience, in the case of a person whose ancestors had embraced Christianity is governed by the provisions contained in the Indian Succession Act, 1925 there is no further scope for applying the principles as stated above, on the facts of the case on the ground of justice, equity and good conscience and the statements made by the learned counsel as

the regard is without merit.

27 While proceeding to make his statement on the assumption that because of the provisions contained in Section 29(2) of the Indian Succession Act, the rule of succession contained in the Act would not apply to a case where succession is governed by Hindu law, the learned counsel for the Appellant stated that in the present case there was a custom in the family to which the Appellant belonged, in accordance with the Christian law stipulated by the Church to which he belonged enabling such person to take Hindu adoptees into adoption and some of natural sons entitled to succeed to their properties.

28 In order to appreciate the relevance made by the learned counsel as also for evaluating the evidence produced on this behalf it will be pertinent to note that the practice of adoption wherever the adopted child is to be treated as the true son, is the real child of the person adopting, has been prevalent in Hindu society for centuries and it is recognised by Hindu Law. Whereas in a large number of countries it is of comparatively recent origin in the Muslim countries it is totally unknown. Amongst Hindus it is not merely ancient Hindu Law which recognises the practice of adoption but it has received legislative recognition in Hindu Adoptions and Maintenance Act, 1956. However in the country there was a statutory law which enables the Christians to adopt children as well as give to them the status of real or natural child. The personal law applicable to Christians has been the common law followed in England where under transfer of parental rights and duties in respect of a child to another person and their assumption by such other person, is unknown although it is possible for a citizen or a stranger to put himself in loco parentis position, child by establishing the affection and bond of a father to make a provision for the child's care to make a life care project in respect of relationship with the child. This matter creates legal relationship not legal status. It may be noticed that subsequently the concept of adoption was introduced in England by the Adoption Act, 1926 which was subsequently replaced by the Adoption Act, 1950 but then in this country as far as Christians are concerned no law has been enacted on the lines of the Hindu Adoptions and Maintenance Act or on the lines of

the English Adoption Act 1950 and 1969 to the case of *Baker v. Kanaz Singh* (supra), a Division Bench of the Court pronounced that although Christian adoption was not a recognized ritual in the manner in which it was understood and recognized among Hindus and Hindu Law and observed that it was to be remembered that adoption is the legal act of a man in law and the bringing up of a child according to the customs of inheritance giving him property in that child and thereby converting him as having been adopted in legal manner.

28 It is in the light of aforesaid observations that I will now proceed to consider the question whether Sri Apt Das had been able to establish by convincing evidence in the facts to which Sri E. E. Das belonged, concerning persons and the Hindu going to the adopted child the status of a legal child relating him to himself in the property of the persons adopting him. In support of his case, Sri Apt Das submitted mainly in his witness, namely: R W 1 Prem Hinder, R W 2 D. D. (Mrs.) Daisy M. Khan, R W 3 Thomas Das, D W 4 (Mrs.) Ben I. Love Dosses, D W 5 A. E. Giffon and D W 6 George MacDonald White. He also produced documents to show that he had been married to the wife of Sri E. E. Das and Sri Maud Das and that he was being married and named as the son of Sri and Mrs. E. E. Das.

29 R W 1 Prem Hinder is the son of Sri Maud Das's brother. According to him Sri Apt Das had been taken in adoption by Sri Maud Das when he was about a month or two old and that he was brought up in Dacca. Thereafter further stated that adoption was an ancient ritual among Christians and that such adoption took place in the family as well according to him like Doss Somoy (the father's name) has adopted son George Tynahilly who was later on named as George Kanon. The wife of Dr. M. Khan had taken the daughter of her sister wife (Mrs. Kanon) in adoption and Narain Samuel had also adopted because Narain Grommer. He also asserted that after the death of Dr. Grommer Narain Grommer had entered the parastate left by him. In his cross examination the witness admitted that although Christian adoption did not take place in accordance with Hindu Law and this, he did not know of

apart from the alleged adoption of Sri Apt Das, no other adoption took place in the family. Moreover, towards the end of his evidence he stated that there was custom of adoption amongst Christians.

30 R W 2 Dr. (Mrs.) Daisy M. Khan is the eldest son of Sri Maud Das. According to her to Sri Maud Das did not have any child she and her husband E. E. Das had taken the son of Sri Archibald Das, brother of E. E. Das in adoption and he had not yet been baptized in Dacca by Sri and Mrs. E. E. Das. According to her there had been cases of adoption in the family of her parents as well as in the family of her in laws. She also made a statement about some such cases. However, in her cross examination she stated that she did not follow any custom provided amongst Muslims and that her sister Mrs. Ethel Walters and Maud Das were amongst Christians. According to her Maud Das and her husband also did not follow any custom provided amongst Hindus or Muslims. She also stated that she never saw any non-Christian custom in ritual being observed in the family of Sri Maud Das or her husband. The witness was further asked whether in any custom of adoption amongst Christians.

31 R W 3 Mrs. Marjorie Das is the real mother of Sri Apt Das. According to her when she was in the family way, it was agreed upon by Sri Maud Das and her husband Sri E. E. Das, who were children that it was the best time for would be brought up by Maud Das and her husband. Immediately after Apt was born, he was taken away by Maud Das and her husband to their home. They got him baptized in Dacca and brought him up in their own side. She also gave statement of adoption by Christians by saying that she herself had been adopted by her uncle and aunt (Phogus and Phogus who were Muslims and that her husband's firm custom that Das had adopted a child Prem Das who was a Hindu. According to her statement, according to her Sri Apt Das had three adopted but husband had purchased certain property in the district of Narsail as her name is also in the name of her three sons, namely, Narain, Amar and Mous applying directly that child adoption. Apt Das was exclusively credited to a separate after family. The witness was cross examined with a view to show that her

is assumed to be effect that immediately after his birth. Apt. Datt was given in adoption by his father and his mother, E. D. Datt was not present but that was not necessary for their effect on the status of this child.

15. D.W. 4 Father (Mrs.) Smt. Dattani is the Parish Priest working in St. Joseph Cathedral, Allahabad. He was unable to say whether Hindu interested in Christianity, owned their custom of adopting children about becoming Christians. He however stated that during his office as Parish Priest he had to see several cases of adoption in Christian families but that he could not say whether in his parish who adopted children were Hindu converts. His govt.-direct witnesses of most of these adoptions had taken place in Christian families.

According to him the practice followed was that after adoption of child the adopting parents got the child baptised and he or she to be known baptised was the only ceremony which completed adoption. The witness made the following statement:—

I cannot say whether there is a custom of adoption or not but there is a practice of adoption amongst the Christians.

16. D.W. 5 A. C. Guleri is the Member of Parliament as also the Secretary and President of the Indian Christian Association. According to him there was agreement amongst children, Christian couples to adopt a child and to acknowledge them as such adoptions had taken place. He stated that 5 or 10 days after Apt. Datt had been born, Smt. Maud Datt and Sri E. E. Datt informed him that they had adopted him. He also pointed out statement made on the affidavit to have been received by E. E. Datt wherein Apt. Datt had been described as Sri E. E. Datt's adopted son.

17. D.W. 6 George M. L. Dutt is the Officer Assistant in Charge in the Boys High School, Allahabad and produced the following story in the notice filed against presenting to Apt. Kumar, Subordinate Division, the name of Sri E. E. Datt, 21, Allans Road, Allahabad had been shown as the column of parent, guardian of the student.

18. On behalf of Apt. Datt, witness was also placed on following documentary evidence:—

(i) Ex. B. 1 the first affidavit submitted by Sri E. E. Datt dated 27th of November, 1946 describing Apt. Datt as his adopted son.

(ii) Ex. B. 2 affidavit of Peter Hendon at W. 2 stating that Apt. Datt had been taken away by Sri E. Datt and Maud Datt and that was unopposed and stated that, the case, to adopt children who are to be treated as natural children of the adopter, parties to whom their properties.

(iii) Ex. B. 3 a postdated 1.5.1947 from Peter Hendon Esq. Maud Datt writes that Apt. was being treated as the natural son, Maud Datt.

(iv) Ex. B. 4 affidavit of Mrs. Pamela J. Mahajan.

(v) Ex. B. 5 affidavit of Margie Reddick Independent No. 4.

(vi) Ex. B. 7 affidavit of D. J. Franklin Independent No. 11.

(vii) Ex. B. 8 affidavit of John Sweeney.

(viii) Ex. B. 9 affidavit of Dr. John J. Dugg, District Commissioner, U.P., dated 11.11.46 at Apt. Datt is recorded in the property of Mrs. Maud Datt in the custody of her adopted son.

(ix) Ex. B. 10 Ex. B. 12 and Ex. B. 13, Certificates of baptism dated 27.11.1946 from St. Joseph Cathedral, Allahabad disclosing that the person baptised had been adopted by natural person.

(x) Ex. B. 14 Certificate of baptism dated 27.12.1946 showing that Apt. Kumar Subadar Datt is present without any 'in C' P. Datt and Sri Maud Datt and.

(xi) Ex. B. 15 Certificate from the Principal of the Boys High School showing father's name of Apt. Kumar Subadar Datt as E. E. Datt.

19. Plaintiff Mrs. Maud Watson submitted as matters in issue witness, namely P.W. 1 Sri Beni Watson, husband P.W. 2 Sri, Dr. Charles Joseph P.W. 3 Anand Kumar Dutt and P.W. 4 Surajpal Prakashan. These witnesses were produced to show the case of Apt. Datt that he had been taken in adoption by Sri and Sri E. E. Datt and that after adoption he had been brought up by his adoptive parents as their own son. P.W. 3 Anand Kumar Datt is a collateral of E. E. Datt. He also deposited that their income banked from Bengal and was

from Punjab as claimed by Apt. Datt. These witnesses also attested that children there was any custom of adoption amongst Christians going to be adopted child a matter of a natural child of the adoptive parents.

38 In support of the case that even after alleged adoption, Apt. Datt was not being treated as the son of Sri E. E. Datt and Smt. Maud Datt, reliance has been placed on following documents:—

(a) Ex. P-1. Copy of the entry from the marriage register of the Allahabad University showing the date of marriage as 20-1-1907 and the name of Apt. Datt's father has been shown as Sri Archibald Datt.

(b) Ex. P-4. The marriage record at the time of marriage of Apt. Datt by his father as per Mr. and Mrs. W. C. Paul, witnesses, the names of Apt. Datt's parents had been mentioned as Mr. and Mrs. Archibald Datt.

(c) Ex. P-5. Extract of the marriage register maintained at All Saints' Cathedral Church, Allahabad, dated 24-7-1916 pertaining to the marriage of Apt. Datt and Aneta Paul, wherein the name of Apt. Datt's father had been shown as Archibald Datt and not as E. E. Datt.

39 On 6th of September, 1944, Sri S. S. Bhargava, District Magistrate appearing for Sri Apt. Datt, admitted that the name of the father of his client was in the records of the Intermediate Education Board for Intermediate/Baccalaureat as also in the record of his service in the Indian Police Service maintained by the Bihar Government, shown as Mr. Archibald Datt (see order sheet, dated 6th of September, 1944).

40 Although the persons do not relate statements Sri E. E. Datt and Smt. Maud Datt had taken up the responsibility of bringing up Sri Apt. Datt or that Sri E. E. Datt and Smt. Maud Datt raised Apt. Datt as their own son, but their on the basis of the evidence produced in the case. It is stated to accept the case of Sri Apt. Datt that statements of Sri and Smt. E. E. Datt were couched. Sri and Smt. Archibald Datt agreed that their name should may be brought up by them in their case and they were able to truth, case of Apt. Datt was taken, and he was being looked after by Sri E. E. Datt and Smt. Maud Datt. This conclusion is strengthened by the fact that in the Supreme Court (Ex. B-10) and the

case made in the school register of the Boys High School, Allahabad (Ex. B-11) the name of Apt. Datt's parents had been shown as E. E. Datt and Maud Datt. It may be that at the time of making entry of Apt. Datt, Mr. E. E. Datt and Mrs. Maud Datt wanted to bring him up just like their own son. The question that still remains undecided is as to whether such adoption of Apt. Datt by Sri E. E. Datt and Maud Datt was an adoption in the technical sense, namely that it gave to Apt. Datt the status and privileges of real son of Sri and Smt. E. E. Datt.

41 It goes without saying that such a case can be considered on Sri Apt. Datt only if there be some material law or custom having legal force which, in such circumstances, confer on the adopted son the privilege of a natural son. The evidence produced on behalf of Apt. Datt, can lead one to infer that generally there is no proper manner or legal situation in bringing up children of others as their own children, but that their manner is compatible about may legally recognized custom among Christians according to which such children become entitled to the privilege of the real child of the persons adopting them. Learned counsel appearing for Apt. Datt invited my attention to the evidence of Peter Hendri (Ex. W-1), (Ex. E-2), Mrs. Patricia J. Mahanay (Ex. B-9), Mrs. Margale Raloff (Ex. B-10), Mr. D. J. Franklin (Ex. B-7), Usher Greenwood (Ex. B-8) and Dr. Daisy M. Knox (Ex. W-2) (Ex. B-10) which it has been stated that Apt. Datt had been adopted by Sri E. E. Datt and Smt. Maud Datt as their own son and in none of them it has also been mentioned that according to custom, the adoption is to be treated as the real son. Some of the deponents of these affidavits are persons who are in connection with the programme contained in the Government Act enacted to succeed to the property of Sri Maud Datt along with Sri Ethel Waters and they admit that in adopted son of Maud Datt, Sri Apt. Datt is, in preference to them, entitled to succeed to her property. It is significant note that out of deponents of above-mentioned affidavits, only two of them are Mr. Peter Hendri (Ex. W-1) and Dr. Daisy M. Knox (Ex. W-2) have been mentioned as witnesses in the case. There is no compliance by Order 13 of the Code of Civil Procedure, whereby the Court possessing any fact or issue to be

proved by the affidavit of aforementioned witnesses. In these circumstances it is not possible to take these affidavits into consideration for any purpose whatsoever.

42. It is expedient to note that two of the persons who filed said affidavits namely, B. W. J. Poon Hooie and B. H. J. De (Moi) M. Khoo, testifying that the adopted son custom established by the parents of natural son, did not see anything about it while giving their evidence before the Court.

43. During the course of argument, learned counsel appearing for Apt. Datt relied not only upon the adopted custom existing amongst prevailing amongst Indian Christians established in the affidavits of the aforementioned witnesses but also upon the custom which according to him prevailed amongst members owing allegiance to Kaim Church as also in the family of the B. B. Datt. However, none of the witnesses produced on behalf of Sir Apt. Datt has mentioned anything about any such special family custom or the custom prevailing amongst Christians owing allegiance to Kaim Church.

44. The real evidence produced on behalf of Sir Apt. Datt that failed to establish any custom such as a custom which has received legal recognition where a child adopted by a Christian for being brought up as his own son appears the custom and customs existed in the parents of a natural son.

45. During the course of argument, strong reliance was placed on behalf of Apt. Datt on the endorsement of Bapam (Ex. B). Highlighting that Apt. Datt had been baptised under the name of Sir B. B. Datt and Sir Maad Datt. It was urged that mentioned Sir Apt. Datt had been baptised in the name of Samuel Sir B. B. Datt. He had to be a natural or born natural son. It is unclear how can the submission. No material has been brought in my notice from which it can be inferred that in the evidence relied for the purpose of the parent in the legalised certificate, the names of the natural parent in the person who by force of law or under some legally sanctioned system can be treated as parent of the child where it is to be natural and that the name of the person who has merely undertaken to bring up the child and has undertaken the obligation of parenthood cannot be entered therein. In Budge Karam

Singh case (AIR 1948 AR 124) against the Court declined to draw any such inference from the evidence of baptism when it reads the following observations:—

The argument on behalf of the appellants is that under Indian practice, namely, the ceremony as informed, adopted by Bapam Karam Singh, Sardar Karam Singh, and it is urged that this ceremony must have been made with a reference by Mr. and Mrs. Karam Singh that they had adopted the boy. Although we are not satisfied that the endorsement of the law as in the proof of Ex. A, have been so fully complied with we shall deal with the foregoing arguments. We may also accept the statement that Mr. and Mrs. Karam Singh in all likelihood said their Dattam that the child to be adopted had been adopted by them. It must however, be remembered that adoption is the technical legal term used and the bringing up of a child in accordance with the intention of giving her a proprietary title and thereby securing her with long term adopted is quite another.

46. Apart from it, it is pointed that in subsequent stage of his educational career as also in the case of adoption the I. P. S. Sir Apt. Datt had described himself as the son of Sir Archibald Datt i.e. the son of his natural father. Both in the certificate used (Ex. P. 1) in connection with his marriage which was issued by his father in law Mr. W. C. Paul and in the marriage register, names which all has been filed in Ex. P. 4. Sir Apt. Datt was described in the case of Sir Archibald Datt. I have strenuously too refused to doubt the genuineness of the real intention and which in this regard, stands fully well substantiated by the marriage register. There, from, certainly reliance upon the case of Sir Apt. Datt that when it was adopted by Sir B. B. Datt as being brought up as natural son, he acquired the legal status of Sir B. B. Datt's natural son and thus under the terms of any such custom, it is claimed by Sir Apt. Datt impossible.

47. The opinion of the learned learned is that neither is there any statutory law nor has any legally recognised custom prevailing amongst Christians been established before me which creates a custom to adopt a child in the name of giving to such child the privileges and status of natural child. A child who has





be situated in that area. The idea of cutting in respect of territory was considered past. And the interests included in a Mortgage of 20th June 1864 Expressly conveyed or held is associated with being in possession actual or constructive under the rights. The word held used in Section 9 of T.A. Act has been interpreted by Supreme Court to mean leaflets held. See *Madhira Singh v. State* (1960) 2 D 407 K.R. *Madhira v. The Member Board of Agriculture Income Tax Asses. A/E* (1960) SC 1034. It explains that the word held is to be understood in the Act in its true sense. The word convey means possession. But it having been used with word held it refers to actual focus or consequently both these words have to be understood as denoting a person who has been in lawful possession. Government has to be understood according to sub-section (14) of S. 3 of the Act in the case it was understood in L.P. *Tenancy Act* which means any specific piece of land in India or Hindu having plantations, forests with such number that they permeate or when full grown will permeate the land or considerable portion thereof from the use primarily for any other purpose in the course of growth. Once a holder is defined in S. 30 of L.P. *Tenancy Act* as a person who has planted a grove on land which was let or granted to him by the landlord for the purpose of planting grove. Another class of persons who could become grove holders were those who planted grove with written permission of the landlord or were entitled to plant on land let out to them in accordance with local customs. But from the class were excluded sub-tenant, permanent tenant holder, land tax tenant etc. So grove land and grove holder under U.P. *Tenancy Act* were two different concepts. The one could not be confused with another. Grove land was matter of law, not process, say difficulty. But as a fact it depended on number of trees, their (nature and nature etc). Sub-tenant has not been defined in the Act. But by virtue of sub-section (14) of S. 3 of the Act it has to be understood in the same sense in which it was understood under U.P. *Tenancy Act*. In that it was defined in sub-section (22) of S. 3 as a person who holds land from tenant thereof other than a permanent tenant holder or from a grove holder or from a rent free grove or from a grove at favourable rate of rent and by whom the rent is or has to be a contract

express or implied would be payable to a person who was entitled to the use. Then it has been held to be understood in the last by a person who was entitled under U.P. *Tenancy Act* to let his land. Sub-section (22) of S. 3 of *Tenancy Act* specifically deferred certain persons from sub-tenant sub-tenant. But a local custom did not suffer from this disability. He could therefore let out his grove land to a sub-tenant. On the other sub-tenant to whom the land was let out sub-tenant was either under permission of others or in such manner that sub-tenant was prohibited from it and it becomes grove land. When grove was planted with permission the sub-tenant did not become grove holder. He continued to be sub-tenant as he had not constituted himself of any part of his land. That was the reason in *Late Taram* case (1974) (referred to as *Case 100*) (supra). The sub-tenant was specifically authorized by the lease itself to plant grove, therefore the Groves Act itself held the lease to be a sub-tenant of grove land. But what happened when the sub-tenant is construction of some of trees or without permission of leasee plants the grove. Does he become a sub-tenant of grove land? or to get additionally could anyone who was sub-tenant sub-tenant continue to be sub-tenant and become a sub-tenant of grove land by planting a grove? In *Singh Bahan v. Commissioner Officer* (1974) 1 B.C. 107 the trees were planted by the sub-tenant peacefully without permission of the land holder. It was held that plantations of trees do not constitute a grove and therefore he continued to be sub-tenant of land. To examine as sub-tenant it has to be seen if a sub-tenant could plant trees or not and its effect. Definite sub-tenant must be distinguished by planting of trees? Under S. 3(11) of *Agrs Tenancy Act* planting of trees by a tenant amounted to improvement. But this was subject to S. 201 of U.P. *Tenancy Act*. Therefore planting of trees by a tenant in the holding created in his improvement. S. 40 however permitted tenant other than a tenant occupying land to plant trees on his holding. A sub-tenant, therefore, was deferred from planting trees. But if he did so that it would contrary to provisions of S. 40 then the Act contemplated he continued as a tenant or being in a manner analogous to land or amounted to violating conditions of the lease under meaning of S. 102. But it did not result



in operation of his sub-tenancy. It only empowers the holder to specterally sub-tenant and not to improve. If a holder that tenant sub-tenant or possessor of such a house became contrary to law, then such a person could require redemption under UP Tenancy Act. And that would be contrary to the terms of the Act. Even a tenant by planting trees in such a structure as to exclude cultivation did not become a bona fide owner merely because by one act or omission a tenant could not acquire rights in his/her rights. How could a subtenant then become a bona fide owner's title? The act of planting trees themselves does not extinguish the tenancy, nor it brings any change in his status and he continues to be sub-tenant till his redemption.

4. In *Beni Datt Singh v. Sahib Singh Ben*, 1963 All. L. J. 231 it was held by a Full Bench of the Court that such tenant did not come to be a sub-tenant by title of time. It was held that if a sub-tenant had a right to remove or possession it could be only in one capacity and that of sub-tenant. The Bench observed that status of a tenant was not extinguished by efflux of the time for which the lease was granted to him. The expiry of the period of the lease had no effect on his tenancy rights. Section 46 provided that when the period of a such tenant was extinguished he was bound to vacate his holding. There is no such provision in respect of removal of the tenant of a tenant. A sub-tenant's interest also was extinguished by the master's death under S. 46 (a). It was not extinguished by efflux of the time for which the sub-lease was granted to him. The period of the sub-lease might have expired, but he continued to be sub-tenant as long as he did not die before, before redemption or expiration the holding. It was not stated in *Beni Datt Singh* as a tenant of a tenant. The only effect of the efflux of time was that he became liable to be removed under S. 46 (a). But so long with time not expired, he continued to be a sub-tenant because his master was not extinguished. It made no difference that he was required to vacate the holding after redemption or expiration the holding because a tenant was not required to vacate the holding on expiration of his tenure. Because the question whether the holding should be vacated or not did not arise so long as the interest was not extinguished. As far as the question whether the interest was extinguished or not the C. P. Tenancy

Act made no difference between interest of a tenant and interest of a sub-tenant. In *Chaudhary Mohd. M. A. Khan v. Board of Revenue*, 1958 All. L. J. 558 it was held that a sub-tenant does not acquire an interest in or derive possession from his sub-tenant.

5. For deriving benefit of right a person may acquire a gross land under the Act. It is the point of time of Ss. 17, 18 and 19 which have to be read together. It may be pointed out that there is no provision in the Act like sub-sec. (2) of S. 20 of U.P. S.A. 1950, Art. 1 of 1951 conferring right of Awaraz on persons who were occupants of gross land in the area immediately preceding the date of coming under the Act a person either tenant under section 18 or Awaraz under S. 19. Section 17 confers rights of Awaraz on a gross holder. That is a person covered under S. 19 or U.P. Tenancy Act could claim such right. As it is from some earlier sub-sec. (2) of S. 19 specifically conferred a sub-tenant from planting, grove, by a sub-tenant could not become gross holder he could not acquire rights of Awaraz under S. 17 because the two contingencies of forfeiture and redemption had to be satisfied. Art. of S. 47 is applied to these sub-tenants who hold land under a valid lease, executed on or after 1950 and their leases, that is, the tenant under such having satisfied any law created to release or his contract must extinguished by satisfaction or abandonment. The sub-tenant of a permanent tenant holder and land, his tenant was not granted the protection. Therefore a sub-tenant of land who cannot claim to be a tenant after expiration of his term, Art. of S. 47 and that become further subject under 18. Another class of sub-tenants who were made holder were sub-sec. (2) of Art. of sub-sec. (2) of S. 18. That is a general clause under which every person who was a sub-tenant on any land on the date of coming into force, a tenant before he was a sub-tenant before, during the period to release (S. 19 or S. 21 of U.P. Tenancy Act) (Amendment) Act 1950 or the land was given land. Therefore if a person was a sub-tenant or grove land then he could not become holder. If at that moment claim of persons from clause 18 of sub-sec. (2) of S. 18 also have been conferred rights of Awaraz under S. 19 (18) and 19 of the Act. But it is held that a sub-tenant continues to be sub-tenant, if that time in that time in that region had

rights of Sankar which is a better right under Z.A. Act. And that would be anomalous if the land due to planting of trees stands converted and belongs given land on the ground of saying that how could the sub-tenant (as defendant) not come forward? It would also be contrary to scheme of Z.A. Act, as a sub-tenant, if not occupying proper land area as occupier in Z.A. Act of 1950 of given land have been given inferior rights of tenant. If it is accepted that despite change in nature of land the sub-tenant continued to be sub-tenant of land then the sub-tenant will become tenant. Therefore, a sub-tenant of land who plants trees either with permission or otherwise and converts land into given land which continues to be on the date of coming into force of Areas of 1950.

1. On this as explained above it may now be examined whether on facts found the petitioner is entitled to any relief. From Plan and Kadar Maps were found two streams. According to them they had planted grove on plots 12671, 12672 and 12711 and these plots were in use to father of Narak Chand and his Dep. According to them they bring out trees of grove land were liable to treatment under section 262 read with 5. While of the last Narak Chand converted the use. It was stated that land was sold to his father and his father planted the trees over the disputed land. Therefore, they were Sankar. Later on the written statement was amended and it was stated that trees were planted in plots 12671 and 12672 and not plot No. 12711. There was no objection on the continuance of plantation of grove but no more was framed on it because, according to that Court it was uncertain whether grove was planted by plaintiff or defendant and what was material was whether land was given land on the date of coming of not. According to that Court plaintiff was given land and Narak Chand was sub-tenant he became an tenant. In appeal the order was set aside and there was error. Documentary evidence in favor the plot Nos. 12671 and 12672 were given land on relevant date. It was held that on these plots were given the respective parties were in Areas. They however did not find that there was any document from which it could be established that plot No. 12711 was given. The Board of Revenue in Second Appeal endorsed the finding of Additional Commissioner. From record in the order of

Additional Commissioner and Board of Revenue it appears from Narak Chand's suit under S. 17(1) of Tenancy Act the requirement of Narak Chand that there was no effect of due to enforcement of Zamindari Abolition Act. It was also stated that the suit was filed because the state of subtenancy had expired or because the landlord terminated the lease due to plantation of trees.

2. Some dispute was raised in respect of plot No. 12711. The Courts below appeared to have assumed that there were no trees standing there. The trial Court did not record any clear finding. The Addition of Commissioner and the Board of Revenue were under erroneous impression. In any case in the dispute a finding referred to Additional Commissioner to be decided upon on facts and then to apply law as indicated above. The controversy in respect of other plots shall also be decided upon.

3. For the reasons stated above both the writ petitions succeed and are allowed. The order of Board of Revenue and the Additional Commissioner are quashed. The Additional Commissioner shall decide the appeal itself. Parties shall bear their own costs.

Parties allowed

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B D AGARWAL, J.

Rajagopal and others, Petitioner v. The District Judge, Manager and others Respondents

Civil Misc. First P.W. No. 1021 of 1982 D/ 274 (1985)

(1) S.P. Zamindari Abolition and Land Reforms Act (1 of 1948), S. 111 - Rate of plantation at Court Order - Two for one condition of sale condition ground that it was obtained by force - Allegations in plaint suggesting that transaction was voidable - Jurisdiction lies on Civil Court to entertain suit - Civil P.C. (1 of 1908) S. 79 - Order 2

(2) S.P. Zamindari Abolition and Land Reforms Act (1 of 1948), S. 111(2) - Civil

HC-MC-1026-1-1985 D/ 576

P.C. (Oct 1986), 22 B. (Jan 87, 2002) — Son — Absentee — Death of son of plaintiff, a Plaintiff during pendency of his suit for cancellation of sale deed. — One death during sale of property gifted to respondent's married daughter — Plaintiff having killed his brother and married daughter (no plaintiff) — Brother being predeceased here under S. 17(1) of Act, right to pursue the suit in respect of property of deceased daughter open here only — Brother making no application to pursue the matter — Son alone as representative died willing to property of deceased — Daughter cannot pursue the matter even if she is the legal representative of its intestate. (Para. 5)

Cross Related Chronological Para	
1981 AB 12 1705	1980 AB 12 117
AB 1981 SC 212	4 2
AB 1981 Mad 145	3
AB 1981 Pk 435	4
AB 1979 Lab 124	4
AB 1979 Pk 177	4
AB 1979 Mad 145	4
AB 1980 AB 117	4
AB 1979 Lab 45	3
1979 19 1st Cal 29 (AB)	3

V. P. S. Srinivas for Petitioner, Subash K. and Bindu Chandel for Respondents.

**ORDER.** — One Das Narain was the proprietor of the land in dispute. On September 17 1976 and April 24 1980 there were registered deeds of sale executed and going to be by Das Narain attorney in favour of the petitioner. The deed of sale dated September 17 1976, pertains to land situate at village Arniya Stry Gudem, the said deed of sale comprises of certain plots situated at village Bafum Bafum Daga. Das Narain along with his daughter, implored as respondent, 1 namely Das Mangum, petitioned Original Suit No. 861 of 1981 in the Court of District Magistrate for cancellation of those deeds of sale on various grounds. Das Narain died during the pendency of the suit on June 20 1980. His death leaving his brother Jag Day as widow the wife of a male issue. The question arose whether upon his death the suit had abated and it was also pleaded for the petitioner's representatives that the Civil Court did not have jurisdiction to try the suit. Preliminary issues were framed by the Civil Court on the points. Both these issues were

decided by the Civil Court against the petitioner on July 29 1982. The reasons filed by the petitioner were dismissed on March 14 1983. Aggrieved the petitioner's representatives have approached the Court.

2. Learned counsel for the petitioner raised multiple contentions in support of the petition. It was submitted at the first place that on the death of Das Narain, his brother became the proprietor of the land under S. 17(1) of the Transfer of Property Act. Learned Advocate for the Respondent submitted that in comparison to married daughter who is placed under (a) and (b) and then being an application from the brother of the, death constituting her substitution as a legal representative of the deceased. Similar could not be maintained by the surviving plaintiff namely Das Mangum. He, also submitted that there being, payment in para 7 of the plaint the effect that the deed of sale dated April 24 1980 may have been obtained from some reporter for the petitioner the petitioners have petitioned Court here on the ground that the respondent implores, real and not voidable. Both these contentions have been considered from the civil suit.

3. Taking up the issue of purchaser first there can be no dispute that the respondents filed the, transactions contained in the plaint have to be taken as their own. The effect of the Court here is to, to establish, put and substance, of what is alleged in the, plaint. Considered in the, light thereof it would be observed that in paras 1, 4, 5 and 6 of the plaint that, is, defendant in substance to the effect that Das Narain was old and infirm, that he had been proclaimed, that he had no male issue, that he reported confidence in the petitioner and that the, transactions impugned were secured in the advantage of his property and married daughter. No doubt, in para 7 it has been added that it is submitted that some reporter was set up to, execute, the deed of sale dated April 24 1980, that it would not be reasonable, to throw the document executed in para 7 from the, plaint and to hold in the, abandonment alone, that the petitioner was in the respondent Court. Learned counsel for the Respondent submitted in support of his contention rely decision in *Kharan Ram v. District Judge, Madras* (1982) AB 12 117 (1982) 48 LJ 1796. That decision may have been attracted to the instant case provided for the

path and substance of the plaint is itself by and that the transaction impugned is claimed to be void. It is not difficult to discern that in the present state of pleading the predominant claim is that the transaction is vitiated on account of fraud or undue influence exercised against the respondent. It is not only that para 3 of the plaint is confined to one out of the two litigated points of law, the rest of the pleadings too suggest that the plaintiffs case has been framed in substance a voidable. The predominant contention, too is such a case according to Khanna J in a case argued as well in the civil Court.

4. As regards the other substance of the plaints viz. the procedure (Sec. O. XXI & 1-C P.C. run as under:

3. Proceedings in case of death of one of several plaintiffs or of sole plaintiff. —

(1) Where one of several plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone or sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court are to appoint a male or that behalf shall cause the legal representative of the deceased plaintiff to be added, party and shall proceed with the suit.

(2) Where under the rule framed by law no appointment is made under sub-rule (1) the suit shall stand as far as the deceased plaintiff is concerned, dead and on the application of the defendant the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

5. Of the two plaintiffs to the suit Dev Nandan died. The right to sue belongs to his daughter who is claimed to survive to respondent 1 alone. Also to the land other than that covered under the deed of gift dated 17th October 1990 is concerned the legal heir is none of S. 17(1) U.P. Act No. 1 of 1956 as Justice the brother of Dev Nandan deceased and son respondent 3 who is a son and daughter of Dev Nandan is placed at at top of S. 17(1). The deed of gift is in respect only of part of certain plots in village, Babara, Bhawan Dajal, Marapur 3 is a male person. That does not in all portion to the land in the village. The part of the plot that is the only deed of gift referred to. There

is none the alleged many part of the plotings for that matter. It follows that upon the death of Dev Nandan, the right to sue for cancellation of intended sale dated 17th September 1976 is required the land in village Babara Bhawan Dajal Marapur upon the brother being a lawful heir is not non-responsive 3. There are applied on by or on behalf of the brother to pursue the action. In accordance with O. XXI R. 1-C therefore, the suit abates in far as the deceased plaintiff is concerned in regard to the cancellation claimed of the deed of sale dated September 17 1976. The right of respondent 3 the co-plaintiff to sue is confined to her share in the plot land to the extent the same has been transferred by sale under the deed executed on April 24 1980.

6. For respondent 3 International appeal that the legal representative of the deceased within the meaning of S. 17(1) Civil P.C. being an accommodation in the capacity however, the court have preference with the lawful heir who is the person in whose the right to sue in respect of the suit gifted land survives. Dev Nandan asserted his right to sue in capacity as representative of his land. Upon his death the plaintiff would be brother as per S. 17(1) U.P. Act 1 of 1956 and not respondent 3. The definition given in the expression legal representative in S. 17(1) merely states that a person who accommodates with the estate may also be treated as the legal representative. It does not mean that a person who accommodates with the estate of the deceased is to be placed in preference to a person who is found to be the true legal representative of the deceased's property. This law is varied that the intention of a person who accommodates with the property of a deceased person into the definition cannot affect substantive right of the lawful heir. In *Lata Bai v. Late Bai* (1981) 1 SCR 471 it was held: —

It is quite true that when a person accommodates with the property of the deceased, he is a legal representative of the deceased for the purpose of procedure to do with the property with which he has accommodated. But it does not mean, principle of law which makes him the representative of the deceased is for as necessary to the property of the deceased is concerned. The definition of legal representative in the Code of Civil Procedure is



6. Learned counsel urged that a person who is approached as a legal representative of deceased party can raise only such objection as could have been taken by the deceased party himself. It is contended in the pleadings and the case of the plaintiff whose representatives he is and counterparty is that in the own claim against the other plaintiff in the case through his lawyer or so in any other proceeding. The proposition is equally well settled and not disputed that the other only through the limited cited authorities also as a deceased wife (1987) 49 Ind Cas 355 (Alla chandraswami v. Sengupta) 11 T. T. Tripathi v. J. B. Gogoi (AIR 1947 Mad 142) Ramdas v. Singh v. Ch. Bhagwanti Singh AIR 1945 Pat 452 Gadh v. Sarna AIR 1924 Lah 431 Mohd. Musa Musajam v. L. Ahmed AIR 1928 Mad 583. The proposition stands of relevance to let of any stand in the respondent. The attack against the right claimed by the surviving plaintiff respondent 2 to pursue the suit in respect of land other than her grandfather's bequeathed entirely upon what is pleaded in the counter case at the instance of the deceased plaintiff.

10. For the deceased in the above I find that the testator has permission to try the suit. The suit has started under O. XXXI R. 32 Civil P. C. so far as the deceased plaintiff is concerned. The surviving plaintiff respondent 2 can pursue it in respect only of her share in the land claimed as have bequeathed solely by the deceased father in 19th December 1980 and to the extent a bona fide purchaser of the registered land of sale dated April 24, 1980. The plaintiff respondent 2 is again and is allowed accordingly. In the circumstances there shall be no order as to costs.

Pratt Singh allowed

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I. P. SINGH AND E. P. SHUKLA, JJ.

Pratt Singh, Appellant v. Sona of D. P. Respondent.

Criminal Appeal No. 3114 of 1977. D. 14. 7. 1988.

Pratt Singh 1987 at 1987, 30, 36, 39 and 400 — Murder case — Self defence — Plea when acceptable

CR. C. 1987 (1987) 481

The right self defence would have occurred to the appellant and he had an opportunity that either death or at least grievous hurt would be caused to him by the deceased. The evidence on record shows that the deceased was being hunted while the appellant was looking a deer. The mere act of chasing is an effort to catch hold of the appellant would not have been sufficient to use words of imprecation to cause an apprehension in the mind of the appellant that he would either be killed or made to suffer grievous hurt by the deceased. The false apprehension of being caught hold of could be rejected by him by using the words against the deceased. There was no justification as for bringing out pistol and firing it at the deceased causing his death. (Para 12)

V. B. Singh for Appellant. By Govt. Advocate for Respondent.

I. P. SINGH, J. — Pratt Singh states appellant has preferred the appeal against the judgment and order of Sd. B. L. Kumar Swamy Judge Muzaffarpur dt. 25.7.1977 reversing and setting aside the appeal, under S. 302 I. P. C. in apprehension for life and under S. 303 I. P. C. inasmuch as I find the sentence to run not correctly.

2. The prosecution case in the Main Case (P. W. 3, Gopal (P. W. 4) and Raja Ram are three brothers living in village Mirwa, Police Station Path, district Muzaffarpur. Raja Ram's pleads that was the son of Gopal (P. W. 3) and specifies Pratt Singh as the son of Raja Ram and his wife Smt. Tulsi Ram (P. W. 4).

3. The prosecution further case is that appellant Pratt Singh and his wife were not on good terms with his parents Raja Ram and Smt. Tulsi Ram (P. W. 4). They had been forced to live elsewhere through a Kotia was attached to them in the demand of the appellant.

4. On 3.7.1976 at about 3.00 p.m. Smt. Tulsi Ram (P. W. 4) had gone to the particular Kotia made the traditional prayers of the appellant to get some seeds. A dispute arose between Smt. Tulsi Ram (P. W. 4) and her daughter in law i.e. the wife of the appellant. The appellant was also present there and he took sides with his mother-in-law. In the process he happened to hit his mother Smt. Tulsi R. with a stick. She came out of the room.

worship. The appellants also followed her and were familiar with a Dandi ceremony in the house. That an accused Gopal (P.W. 4), Manu Ram (P.W. 3), Ram Kumar (deceased) and others they approached for help and while appellants were beating her over her mother. Exchange of hot words still almost took place. Ram Kumar (deceased) intervened and helped the appellants to save her son. The appellants ran inside her own house. The above mentioned witnesses followed her there. The appellants happened to meet over the case. Ram Kumar (deceased) took a stick and held it. The appellants took a piece from the plaintiff's property and beat a dog at Ram Kumar (deceased) and him at his neck. He fell down. The appellants ran away.

3. The deceased in an equal condition was taken to the hospital and by the next day reached there. He breathed for her.

4. The last information report of the medical was lodged by Gopal (deceased) (P.W. 1) at Police's medical for the case on the same day at 5.25 p.m.

5. The post mortem examination of Ram Kumar (deceased) was conducted by Dr. B. C. Pandey, Medical Officer in charge, Mah. Hospital, Luck. on 4.7.1974 at 11.45 a.m. The probable time when death was about eleven hours. The lig. is with the slight level of the consciousness. The deceased had an unconscious injury in the form of a pin shot wound of entrance 18 cm. x 1.5 cm. on the side of neck. 7 cm. from the side of the neck below the side of the neck. The internal examination revealed fracture of left coronal fracture below the above injury. There was a fracture of left rib also. There was a hole in the hole of the right lung through and through the Pandey also took out a pellet from the right side chest. In the opinion of the doctor, the death was due to shock and haemorrhage as a result of the above monocontingency. In the opinion of the doctor, the above injury was sufficient in the ordinary course of nature, to cause death.

6. The appellants in the course of treatment under S. 13 of P.C. almost showed all the above facts put forward by the prosecution except that he was beat his mother or that he loved a shot at the deceased. According to him, when he was chased by the deceased under the house, three persons were coming inside the house and it was one of those persons

who fired at the deceased. However, he did not lead any evidence in defence.

7. The prosecution examined three witnesses namely Gopal (P.W. 1), Manu Ram (P.W. 2) and Ram Kumar (P.W. 4). Before we deal with the evidence of the two witnesses namely Gopal and Manu Ram, we would like to dispose of the evidence of last witness Ram (P.W. 4). She is her statement supported the prosecution version except that the appellants had beaten her. Her statement that she had not witnessed the incident as stated by Ram Kumar (deceased) in other words she did not support the prosecution that the appellants had fired shot at the deceased. For this, the prosecution got her declared hostile.

The contention of the learned counsel for the appellants is that since the location of the scene incident is the rural village of Jee, Taluk, Ram (P.W. 4) by the appellants and when she has asked that the appellants had not beaten her, the prosecution case has no legs to stand and the last alone should mark acquittal of the appellants. However, there is nothing the appellant has. Taluk Ram is the mother of the appellants. In the initial stage of the investigation, the case was subjected to medical examination and the doctor had found three wounds ranging from 4 cm. x 1.5 cm. to 5.5 cm. x 1.5 cm. on various parts of her body. The wounds were simple and at the time of her examination, i.e., at 7.15 a.m. of 4.7.1974, they were unlikely to be of dangerous within one day. This also conforms with the alleged time of the occurrence. It is also to be noted that, at the time, signalling the appellants released on bail, she had filed her affidavit wherein she had stated that, when the dispute was going on, two persons unknown to her had intervened and one of them had fired the shot killing Ram Kumar. This affidavit is directly inconsistent with her evidence under cross-examination. She stated that she had not witnessed the incident in which Ram Kumar was killed. She made a statement under oath in the affidavit that she, of the two persons, who had intervened in the dispute had fired the shot killing Ram Kumar. One can well realize that the incident on her had taken hold of her as putting in that affidavit to help her son, the appellants. In the court she did not support the prosecution version that the

significant leadership as involved in the document. At any rate, we would not place much reliance on what she has to say, in the market. That is so because there are other top-level executives, namely, Google's CEO and former IBM CEO, who

It is worth noting that "Mama" (P. 75) is equally related to first degree murder both to the deceased and the appellant. He commented that he was present due to his relationship to the deceased and requested that the appellant be in a way Mama that should go against the appellant. Both Joseph and Mama Kye have fully corroborated the prosecution version in all details. They have emphatically stated in the concluding part of their statements that the appellant ran into the house followed by the deceased who wanted to catch hold of him. They and other witnesses who had remained outside the house had also followed them into the house. Both these witnesses maintained that they saw that the appellant had climbed over the main gate and when Kame Kame was trying to catch hold of him, the appellant took out paraffin from the pocket of the trousers and threw a stone. Kame Kame himself weighed him as he was walking after him down. There is no reason why their statements should not be followed. The same fact that they are related to the deceased would be no disadvantage to believe them because they are also closely related to the appellant.

10 Learned counsel for the appellant has laid much stress on the point that even if the appellant has not taken the plea of self-defense, yet the record leaves no doubt that plea and its foundation may be given credit of the same. The only facts in the evidence ascribed to the learned counsel are that the evidence shows that Ram Kanya (Mysamma) had once pushed the appellant and there had shown the appellant inside the house in order to attack him. It was argued that these events were on the plea of the deceased pushed the appellant, not of the appellant attacking him down as he self defense. But we are not impressed by the argument. The right of self defense would have accrued to the appellant only if he had an apprehension that either death or serious grievous hurt would be caused to him by the deceased. The evidence on record indicates that the document was being handled, while the

applicant was holding a Death. There was no effort to catch hold of the applicant or was there would not have been sufficient by any means of transportation to bring the apprehensions in the mind of the applicant that he would either be killed or made to suffer grievous hurt by the deceased. The little apprehensions of being caught hold of could be expelled by him by using the Death against the deceased. There was no participation in bringing out pistol and firing it in the deceased causing his death. In this connection, we may allude to the suggestion given to Gopal and Jitendra that Raju Kumar (deceased) while chasing him was carrying a Nakam. But this aspect of the case has never depicted by the applicant in his statements under S. 345 Cr. P.C.

iii. As a result of overall disagreement of the evidence and circumstances of the case, we are of the opinion that the appeal has to be dismissed. The appeal was filed.

12 The applicant acknowledged the payments and orders of the court before her conviction. The conviction and sentence awarded are upheld. The application is on bail. The child respondent is to be held bound to serve out the sentence. He shall be taken into custody.

1000

WILLIAMS, J. L., and J. L. WILSON. 1982. The effects of the 1977-1978 drought on the population dynamics of the desert quail, *Callipepla squamata*. *Journal of Wildlife Management* 46:101-112.

**Samuel Hodge University**, Applesby, is  
Chief of the Navy and a member of the Navy.

Trans. Am. Acad. Sci. 340: 1-17. 1977.

1.4 Civil P.C. 15 of 1961: Q 22 R 4 =  
Survival of right to sue against surviving  
defendants = Defendants in joint tortfeasors  
= Appear sharing against one defendant =  
No abatement against others

A University filed the motion last August. The university said it was confident of the recovery of money, based on that date only. The suit was dismissed by the trial court.

\*Present address of Dr. P. Sauer, Dr. Adolf  
Fest, Berlin, Germany, D-1000



T-declaring independence of appeal. Appeal against T stated in its legal representation were not brought on record within the limited period. The issue was whether the appeal stood against C also.

Held that the statement of the appeal against T cannot as well serve to make the appeal stand as far as C is concerned.

(Para 1)

Upon the pleadings of the parties and the evidence placed in the record, the case is one of joint tortfeasance. Parties are said to be joint tortfeasors when they separately commit the commission of the tort, are shown to have acted in common design. It was held stated in the case that the two defendants acted in concert or that they conspired to defraud. The conspiracy in the University is that defendants was made by C and T was guilty of negligence as per endorsement to the Access Rules. The breach of duty by the two defendants, in their respective spheres respectively, jointly brought upon the appellant. The appellant is entitled to sue, all or any of them for the full amount of the loss. Hence, the stated case cannot be treated as one of joint tortfeasance. AIR 1982 SC 497 (Hd. App.) 1979 AIR 608, 609.

(B) Limitation Act (36 of 1963) Art. 66 – Expression. Specific movable property – Debt not arose interest of money. AIR 1944 SC 497 (Hd. App.) 1943 ILJ 1 AIR 440, 1947 ILJ 25 AIR 271, AIR 1950 AIR 487 and AIR 1950 AIR 497 Not followed as per AIR 1954 SC 457 (Para 10)

(C) Limitation Act (36 of 1963) Art. 4 – “Agent – Who is (Woods and Phoenix – Agent)”

The Agent within the meaning of Art. 4 is a person employed to do any act for another or to represent another in dealings with third persons. Contract of agency need not be created by a written document. It may be inferred from the circumstances and the conduct of the parties. The position of the treasurer and the author of the University of the University is that of an agent to the University. AIR 1978 AIR 867 (Hd. App.)

(Para 12)

(D) Limitation Act (36 of 1963) Arts. 4 and 113 – Breach of trust of limitation – Suit for money defunct by treasurer of University

– Limitation held started from when Vice-Chancellor knew it and not when matter was placed before Executive Council

The action suit was filed by the Banaras Hindu University for the recovery of an amount defuncted to its treasurer. The Vice-Chancellor, on learning about the defalcation had placed the matter before the Executive Council of the University which then approved of the necessary action. The issue was whether the limitation for filing for was argued from the knowledge of the Vice-Chancellor.

Held that the Vice-Chancellor did not have as much as his hands tied for as long as the matter did not come to be placed for one reason or the other before the Executive Council. He could initiate action on his own ground and make application to the Chief Executive of the University, responsible to ensure that the Access Rules and the Rules were carefully observed. Hence it would not be correct to take a strict view, that the right to sue within the meaning of Art. 113 did not accrue to the University till the matter had been considered by the Executive Council.

(Para 14)

(E) Limitation Act (36 of 1963) S. 2(1) – Applicability

A University sued T, as treasurer, for the recovery of an amount defuncted. C, the mother was joined later. The issue was whether S. 2(1) would apply to the suit.

Held that the position of C, not being for his hands, or so negligent then, against future litigation but with a view to seek recovery against future case contemplated as established and since there was the claim specifically against him and otherwise in favour of or against T, interest would not have flowed. C therefore has no cause from the application of S. 2(1). Case law discussed.

(Para 24)

(F) Limitation Act (36 of 1963) S. 10 – Trusts – Who is (Woods and Phoenix – Trustee?)

The action suit was filed by a University against its Treasurer and Cashier.

Held that S. 10 contemplates the situation where property has become vested in a trust as the person concerned for any specific

purpose. The expression *trust*, as used in the system in a technical sense and denoting an obligation which would be a trust in the strict sense of the term, is distinct. There lies that a person is loosely called as trustee for the sake of convenience and his obligations analogous to those of a trustee will not make him a trustee under the system. Specific purpose means a purpose which is specified or expressed. There has to be a trust created by the act of a party and it will not apply to a trust arising by operation of law or implied from an obligation in the nature of trust. S. 19 could not therefore be applied. AIR 1964 Mad 115 and AIR 1959 Andh Pra 186. Ref. to

(Para 26)

Case Reported	Classical Page	Para
AIR 1972 SC 1381	8	
AIR 1972 All 406	10	
AIR 1962 SC 49	8	
AIR 1960 Andh Pra 58 (70)	20	
AIR 1960 Andh Pra 186	26	
AIR 1964 SC 327	30	
AIR 1961 SC 1277	38	
AIR 1961 Mad 135	26	
AIR 1962 Guja 164	26	
AIR 1958 All 694	8	
AIR 1956 Cal 187	26	
AIR 1958 All 387	10	
AIR 1960 All 375	10	
AIR 1954 All 467	12	
AIR 1923 Bom 152	22	
(1980) 1 LR 30 Cal 585	30	Cal 586-587
(1971) 1 LR 29 All 579	30	All 579-580
(1964) 1 LR 28 Bom 11	30	Bom LR 668-669
(1971) 1 LR 14 All 524	30	All 524-525
(1972) 1 LR 5 All 241	30	All 241-242

*Solomonson Trusts for Appeals & Pensions for Employees*

**JUDGMENT** — This is a plaintiff's appeal. It is an out of a sum for recovery of money.

3. Barakat Hachky University, the plaintiff-appellant, is a body corporate governed by the Barakat Hachky University Act, 1913 and the Statutory Instrument thereunder. Syed Ibrahim Chacha, defendant 1, joined death was Treasurer of the University. During the relevant period 1962-64 Golak Das Nagu, defendant 2, was Senior Assistant Cashier. On July 24, 1964 a

report was made that there was shortage of Rs. 30,000 in the Finance Section which is a wing of the General Office of the University. The Treasurer placed Nagu under suspension with effect from 2.8.1964. First Interimisation Report was lodged by him on 2.8.1964. An affidavit under S. 408 Penal Code. A request was made by the Treasurer to the Assistant General D.P. for special audit on 6.8.1964 in respect of the Income and Expenditure account of the Cashier. 1962-64. The special audit report is dt. 1.2.1965. On 30.2.1965, the same placed before the Vice-Chancellor. It disclosed deficiency of a sum of Rs. 30,000 including the amount of Rs. 20,000 which is a deposit in the case and is covered by the first cheques mentioned below:

1 Cheque	Dt. 13.11.1962	Rs. 1-000
2 Cheque	Dt. 13.11.1962	Rs. 1-000
3 Cheque	Dt. 26.08.1964	Rs. 10-000
4 Cheque	Dt. 26.08.1964	Rs. 10-000

According to the plaintiff, Golak Das Nagu, defendant, cashed these cheques by way of making temporary advances from the State Bank (University Branch) but did not deposit the amount or accounted for the same otherwise. It was not entered in the cash book either. The special audit report was considered by the Finance Committee when meeting held on 10th April 1965. It recorded no vote in confidence for the purpose of being placed before the Executive Council. The Executive Council decided approximately April 12, 1965.

5. The case going on to the appeal, was initiated on 10th April, 1968 by the University against Syed Ibrahim Chacha. It was averred that the defendant was negligent in not clearing the Account Books. The cheques could not be drawn unless the amount was reported for immediate debetment. The Cashier himself could not be the payer for the cheques. Vouchers were not prepared. Entry of any voucher was not made in the Advance Ledger. The Treasurer did not verify and sign the cheques. Cheques being the supporting vouchers. Cheques were not entered in the Cheque Register. A sum of Rs. 20,000- was embarked by Central Bank Nager, the Senior Assistant Cashier. In defence, Syed Ibrahim Chacha stated that there was negligence or omission otherwise of responsible duty on his part. He was not concerned with the



independent branches of duty to the plaintiff, could that so-called defense require no special rules are required for that defendant is liable for the damage which he caused and only for that damage. Where, however, two or more branches of duty by different persons create the plaintiff's claim a single rule for parties is more complicated. This is a matter case is one the plaintiff is entitled to sue either way of claim for the full amount of his loss which means that special rules are necessary to deal with the possibilities of successive claims in respect of that loss and of claims for contribution or indemnity by one defendant against the others. It is partly to the plaintiff's advantage to show that he has suffered the same valuable loss at the hands of a number of defendants for he thereby avoids the risk, inherent in cases where there are different aspects of liability that one defendant is superior for recovery and being unable to secure judgment against him.

4. Request being laid to the common fund, a caveat be read immediately that the applicant could not have brought the action for the necessary relief against Golod Dan Frager alone, who is still before the Court in the appeal. Different rules can be passed against corresponding defendant or to cover (i) the charges being made out and despite the absence of the other defendant (namely, the Treasurer. No conflict of interest can be said to arise for the obvious reason that they were not joint defendants. None of the three were laid in the *Suez of Frager v. Yusef* (see AIR 1962 SC 18) followed in *T. F. Gupta v. Mark Prasad* AIR 1973 SC 1181. And for that to be situated so as to lead to the conclusion that the appeal against the surviving respondents is incompetent. In *Van Chandu Rao v. Panna Zuhra* AIR 1979 AL 598 (1979) for the respondent the plaintiff had based her claim on strict alleged scheme jointly constituted by all the defendants and the relief claimed was made against the defendants, as these facts. This evidently constitutes the distinguishing feature.

5. This can be viewed from another angle also. According to the plaintiff, case the Treasurer was guilty of breach of statutory duty contained in the *Finance Estimates* issued by Finance Laid in 1964. It is another alleged

one shown that the liability was contractual. Under the present common law rule based on the reason that personal wrongs can pass, the death of either party extinguishes, meaning none of action is left to be against the other. It is not the case of the University that any property was appropriated by the Treasurer yet that he added the same to his estate. See *Whitfield* in Text page 1071. The claim of action against *Yusef Chandu Gupta, the Treasurer*, therefore died with his death. In response, some difficulty is inherent in legal representation on the record in accordance with O 22 R 4 (ii) C.P.C. It is noted that application under O 22 R 4 cannot be filed, if the right to sue does not survive in all or if it survives against the surviving defendant alone. In such a case R. 2 will apply, R. 2 provides that where there are more defendants than one and any one of them dies and where the right to sue survives against the surviving defendant alone, the Court shall cause an entry to that effect to be made on record and the suit shall proceed against the surviving defendant. The preliminary objection raised by the respondent cannot therefore be removed.

6. Learned counsel for the applicant urged that the court before were making the rule that the suit was barred by limitation. It may be recalled that there was report made on 12th July 1964 pointing that a copy of the 1966/67 was sent to the Finance Laid. Special Audit report of 1965/66 was placed before the Van Chandu Rao on 10/2/1966 and the Finance Commission considered this on 12th April 1966. It came up before the Executive Council for the first time on April 13, 1966 when it took the decision in the matter. The argument advanced is that the limitation should have been taken to commence on 12th April 1966 and hence the suit brought on 10th April 1966 be treated as a late limitation. For the other side it is maintained that the running point of limitation would be 10/2/1966 if not earlier because the Van Chandu Rao is not made known appeared on that date upon the Audit Report being received. The trial court has applied Art 4, Limitation Act 1963. The relevant Articles which may deserve consideration are:





ing notice of the Finance Committee and the Executive Council showing the total sum to be raised, minutes of the meeting and the steps taken to ensure the money will provide the sufficient. The Vice-Chancellor did not have any, but, notwithstanding his hands out for so long, as the matter did not seem to be placed for any reason in his other before the Executive Council, the court seems agree on his own general and wide authority as the Chair of University of the University responsible to provide adequate funds. Minutes and the Rules agree on which showed, being, now it would not be correct to say of it as if it was that the right to provide for the meeting of July 115 did not occur as for University, as 1961 for the more reason that the matter had not all the time considered by the Executive Council. Limitation commencing on 1962 1963 would appear that clearly on 12 1964 prospect, of whether the plaintiff applied under Art. 4 or Art. 115 Limitation Act.

17 In addition to the above, learned counsel for appellant 1 submitted that so far as that respondent concerned, the case is to be treated as having been determined on 10-1-1970 when he was for the first time impleaded in defendant 2's suit and hence the suit against him is barred by three years' rule of limitation. Reference is placed on 8 1968 Limitation Act 1963 which reads as under:—

(1) Where after the institution of a suit a new plaintiff or defendant is introduced or added the suit shall, in respect of him be deemed to have been instituted when he was so made a party.

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made, in good faith it may direct that the suit in respect of such plaintiff or defendant shall not be deemed to have been instituted on any earlier date.

As mentioned above, the suit against appellant 1 was filed on 10-1-1970 against the Treasurer alone. He stated a plea of non-jurisdiction whereupon learned court directed on 10-11-1969 that the Senate Assistant Cashier be also impleaded and this was done on 10-1-1970 upon application 5. It 12 1969. The appellants claimed in regard that the position of defendant 2 being considered as that of a proper party under the suit is not to be considered as barred

by limitation as terms of 5 (1) is interpreted. On the facts stated, firstly, not repeating the correct legal position. Due to reasons stated above the suit including against the defendant 2 would have been barred by limitation on 10-1-1970 and not on 10-1-1969 as it was not a party to the suit. Secondly, then again the suit was being of good substance with the two defendants, read on his own footing. The suit against defendant 1 could not be barred not due to the Senate Assistant Cashier being made a party, there is a dissent and will continue case of some set up against defendant 2 chargeable with contribution to the plaintiff's account. No such charge is made against the other defendant. It is again, that the defendant of the defendant 2 being not impleaded by 1968 the suit against defendant 1 does not become barred by limitation, but to be as noted couple against defendant 2 having in concerned the suit continues. They and under the suit actually barred the plaintiff could not as any other against the defendant 2. In order that recovery of money made by it to them has there was no other way except as per facts either separately or by way of a couple direct in the private account. It is not known how for the sake of recovery claimed against the defendant 2 it might be claimed that he is to be regarded a proper party the necessary party. No dissent against him was obtainable behind his back.

18 The principle governing in *Global Ltd v. Shanthappa AIR 1954 SC 1177* at page 1182 is as

"The rule that a person who ought to have been joined as a plaintiff or defendant is not made a party will not deprive of the benefit of the suit in respect of him be barred by limitation where he is joined, but the application is not, consider of proper parties. In *Chatterjee v. State*, 11-1944 AIR 29 from 11-1-1944 to 12-1-1944, paragraph of a letter, was rejected by paragraph by two plaintiffs, the second plaintiff being, described in the paragraph of the 1-1-1944. At a late stage of the suit, defendant 1 used an application that the other defendant, which, finally had not been joined. The trial court allowed the application filed for the other defendant to be joined in parties and directed the suit. But the appellate court dismissed the suit holding, that it was barred because of 5-10-1944 on Art. The High Court held that 5-10-1944

Act does not in itself purport to determine directly whether the pendency of the pendency after the institution of a suit in all cases necessarily is dispositive for limitation of the period prescribed for such suit. But this is not so. Such a result must depend upon whether the pendency was necessary to enable the court to avoid such suit in order to give notice to himself. If both parties are merely joined for the purpose of safeguarding the right to bring up as defendants their mutual claims jointly in the same action, the determination as to the date of the institution of the lawsuit regarding such jointly joined parties does not unduly affect the right of the original plaintiff to recover the suit and will not attract the application of the general provisions of the Limitation Act.

**B.** The case of the suit in whether both parties are merely joined for the purpose of safeguarding the right to recover from them and others claiming jointly in the same action. It is also the determination of the date of the institution of the suit as regards such jointly joined parties. It does not unduly affect the right of the original plaintiff to recover the suit. In a case of mortgage for the benefit of the other co-mortgagees are added and the right to sue on the other co-mortgagees being brought on the record is for the benefit of the defendant to raise a defense against further litigation. The subsequent pendency of the defendant as co-plaintiff or co-defendant defendants did not mean § 22 of old Act (Corwin v. Corwin v. Corwin, 1903) 118 Cal 111. (See also Secretary of State v. Corwin, 1903) 118 Cal 111. The position changes when they are added against the party added defendant in his own right. Against defendant 1. (See Shuman v. Gupta) the suit may not have failed because Colgate-Palmolive defendant 2 was not brought in immediately after 1933 but also for that reason suggests that even as against defendant 2 those whose recovery is claimed the rule of limitation be bypassed. The Court also notes that neither defendant 2 nor defendant 3 were joined by the plaintiff. The power of a Court to add a party, and the drop of the Court does not mean that the suit is barred by limitation are two different questions. (See also v. Latham, 1903) 118 Cal 111. It was held that where the Court added a plaintiff of its own motion and the suit is such as could not

be brought without him, § 22 Limitation Act 1933 applied to right of suit of the person so added. A Full Bench of the Calcutta High Court affirmed in *Colgate-Palmolive v. Colgate-Palmolive* (1903) 118 Cal 111. It was held that a Court adding a party, sometimes means a suit filed from the restrictions of the Limitation Act.

**C.** In *Shuman v. Gupta* (1903) 118 Cal 111. It was held that the suit was brought to enforce a mortgage deed against the mortgagee. The plaintiff of the property and other persons. One 5 applied and was made defendant in his instance in a subsequent mortgage § 22 Limitation Act 1933. It was held that the suit was not barred by the fact that a suit was filed to be dismissed if a joint mortgage is left out. The Court is such a suit shall not affect those who claim against the mortgagee irrespective of whether they are or are not registered as parties. It is also that defendant the mortgagee being. In the present case a defense against defendant 2 could not of its own force had defendant 2.

**D.** The decision in *Colgate-Palmolive v. Colgate-Palmolive* (1903) 118 Cal 111. It is also of no consequence to the plaintiff. The Managing Trustees of a Hindu temple are to recover damages for use and occupation of the land. The defendants were in unauthorized occupation of the land. The defendants moved on ground that the suit was brought only by one of the trustees was not maintainable. Thereupon the two other trustees were impleaded as supplemental defendants. Upon the law stated of § 22 Limitation Act 1933 it was held.

Whenever at the inception of the necessary parties are impleaded the one plaintiff of other parties who are necessary, or indispensable but whose pendency is only desirable to safeguard their rights and the rights of others, and to prevent further litigation does not render the suit as improperly maintained and the pendency of those parties after the period of limitation will not have recommended the demand of the suit.

**E.** It will be seen that the decision in *Colgate-Palmolive v. Colgate-Palmolive* (1903) 118 Cal 111. It was held that where the Court added a plaintiff of its own motion and the suit is such as could not



known, and the defendants will have been equally bound by it in the present case) that could directly channel against defendant 2. A piece to channel at or against the other defendants will not have an as large bound defendant 2.

25. The position is illustrated in S. B. Doss v. S. M. Hodge AIR 1951 Bom 170 in a 2:1 split in Bench.<sup>10</sup>

If applicant is seeking an order against defendant 1 by claim 1 with respondent 1's approval, but it does not follow in "all cases" where a party is added as defendant to the extent that the period when the claim first claimed by the plaintiff against the other defendants would be barred, due to, when the defendant (the claim of the plaintiff) claims becomes barred by limitation.

(Emphasis supplied)

26. The position of defendant 2 not being, for his benefit or to subject him against future litigation but with a view to work recovery against him in case respondent is established and since there is the claim specifically against him and a decision in favor of or against defendant 1 alone will not have to and defendant 2 there can, in my opinion, be no escape from the application of S. 21(a) of the new Limitation Act.

27. Learned counsel made reference also to the proviso to S. 21(1). This proviso does appear in the corresponding S. 22 of the old Act. The court below was understandably misled upon S. 22 instead of S. 26 of the new Act though the issue of a time bar under the new Act had come into force. Upon its maintenance the record is not possible, as the respondent's content right is argued to extend to binding due the non-implementation of Central Debt Voucher defendant in the suit as originally framed was due, an order made to good faith. The provisions contained in the plaint as actually filed speak for themselves in this behalf. It was made clear on the page that by distribution made due by Nagar and the plaintiff thereof were also given. When the plaintiff arrived in the implementation of obligation passed by the Tribunal the stand taken for the 4 months before the lower Court as recorded in its order (D. 26-11-85) was that a criminal complaint was proceeding against Nagar who actually had collected the amount

and further that it was not decided whether any civil action would be brought against him and other respondents in that behalf. The application to implement Nagar was approved by the Members of the Bench. It was also held maintained in the pleadings or in the application (D. 26-11-85) to implement Nagar that the position to arise here as a defendant was concerned with respondent 1 in good faith. Prior to the institution of the suit the parties had been considered at length in various heads Finance Committee, deliberated over the case. It came up also before the Executive Council. We have on record that meeting minutes of the Court were also conducted before the suit was brought. The documents not in present on or a specific against Central Debt Voucher application to have been deliberately avoided their deliberation and thought given to the matter. The proviso to S. 21(1) now cited is, involved whether plaintiff's decision to bring under the court and a possible in person in to where and how did the mistake was not to type, that the respondent despite the 175 and 176 in fact, what is.

28. Again, the trial court's failure, in its decision, was made in S. 21 Limitation Act also. This however cannot be said pointed before respondent Court. The nature of applicant S. 21 Limitation Act constitutes the situation where property is to become, would in a case in the person concerned for any specific purpose. The applicant must stand in the position of a plaintiff, and the right is an obligation which would be a trust in the first instance of the court of the law. More law that a person is known called a trust, for the sake of convenience, and that obligation is unknown to those of a person's will not make, has a trustee under the system. Specific purpose means a purpose which is specified or approved. There, has to be, a third party, by the act of a party, and a will not apply to a trust arising by operation of law as implied from obligation in the nature of trust. (Hussain Ali Beg v. M. Ali AIR 1946 Mad 110; V. B. v. G. Venkatas AIR 1974 A.P. 100)

29. Consideration being paid to the observations made in the above the conclusion in my opinion is inevitable, that the suit was barred by limitation which would be on 26 April 1985 and the question of the Central Debt Voucher defendant is a barred by time.

also in view of S. 2(1) Limitation Act 1962 in regard to how *Pradhan Gagan* is now worded by, made at the time that on the appeal there had no other sought against him though he was advised in response to 2. There is a specific reference that calls for, instead of appeal which made.

The present appeal is being filed for the relief granted against respondent 1. In *Pradhan Gagan* appeal is considered with *Pradhan Gagan* 17 resolutions No. 267 (2) 268 (1972).

The appeal has thus been pursued virtually against *Pradhan Gagan* respondent 1 alone from the initial stage.

**26. Respondent 1 has** not even objection against the findings recorded against him. Since the appeal has proceeded of substance as now, the findings above is a well called upon to enter into nature of these other findings.

**27. The appeal and the cross objection** not consequently dismissed in the circumstances. Limit shall be borne by the parties thereto (b).  
**Appeal Allowed.**

1986 JUL 3, P 43

K. N. SINGH AND B. K. MEHLA JJ

State of U.P. Appellant v. *Pradhan Gagan* Respondent

Govt. Appeal No 195 of 1985 D. 178 1985.\*

**Allahabad High Court Rules (1952), Part I Chapter V, R. 21 (Form 1a) — Appeal against judgment —** Direction under the proviso that all applications for leave or special leave to appeal against order of appellate court S. 276 Cr. P.C. be heard and disposed of by a judge sitting singly — Direction hold not strict rule of Ss. 261 and 265 Cr. P.C. — However, looking the direction as imperative the High Court suggested modification therein. (1) Constitution of India, Art. 226, (a) Criminal P.C. (2 of 1974) Ss. 265, 266, 276.

\* Appeal judgment and order of B. K. Mehta, learned Judge, Meerut D. 203 1985.

**R. 21 (Form 1a) of Chapter V, Part I of the Allahabad High Court Rules (1952) as well as the order of the Chief Justice, in pursuance thereof directing that a Judge sitting alone may hear and dispose of leave matters under S. 276 (a) and that Cr. P.C. was held not absolute, Ss. 261 and 265 are other provisions of the Code. Ss. 261 and 265 do not relate to hearing of appeal against order of appellate. The question whether leave application is contemplated by S. 276 (a) the Code should be heard by a single Judge or by a bench of two Judges has no answer in Ss. 261 and 265. It is well established that an appeal against sentence of death and proceedings initiated by the Sessions Judge for confirmation of death sentence shall be heard by a Bench consisting of not less than two Judges. Apart from that, there is other provision in the Code requiring hearing of appeals filed by the State under S. 276 of the Code by a Bench of two Judges. In the absence of any such provision under the Code it is permissible to frame Rules under Art. 226 of the Constitution providing for hearing of an appeal under S. 276 of the Code by a Judge sitting alone.**  
(Para 4 + 12) (2)

The difference in the language between (1) and (1a) of S. 276 suggests that in a case where the order of appellate court has been granted in a case reviewed upon compliance an application has to be made for the consideration for the grant of special leave to appeal. From the order of appellate it further makes clear that the appeal may be permitted only after the High Court has granted special leave. But where appeal against the order of appellate is filed by the State or under section 276 or section 271 no separate application for grant of special leave is necessary. In both a case prior the leave may be incorporated in the process of appeal itself.  
(Para 7)

However, the High Court observed that the Chief Justice appeal to him raised the order granting the application for leave and give at least an adequate preliminary from the appeal itself. Under the order which Chief Justice is within his power whether leave followed in the High Court an appeal against appellate involving an application for leave is required to be contemplated by S. 276 (a) or 276 (4) or 276 (5) before a single Judge. It and where the single Judge grants leave and commences the appeal.

it is stated before the *Dewan Barch* for hearing in accordance to the *Shariat*. Since the Single Judge retains great power, the appellants' demands are not heard. In *Shariat-e-Islami v. Atan-ul-Ulhaq and others* (1), a bench of two Judges. This results into injustice. To remove the injustice, it would be just and proper that *Shariat-e-Islami* should be developed as the *Dewan Barch*. Therefore, the appeals against order of acquittal involving sentence of death or imprisonment for life, decided by the Court of Session, together with applications for grant of leave should be heard by a bench of two Judges while appeals against acquittal in respect of other offences together with applications for leave may be heard by a Single Judge. (Para 5-14)

#### Case Related: Chawangpoil Pao

AR 1982 SC 600 1982 Cr LJ 444 39 LR AR 1977 SC 1326 1977 Cr LJ 997 ? AR 1974 AB 47 1974 AB LJ 444 1974 Cr LJ 10 10

By Court Appellate, for Appellant 3rd Put and 1/5 Time or for Respondent.

**S. N. SINGH** — On a reference made by a learned Single Judge of the Court, the following question has been posed before us for decision:

Whether provision of rule 2 of Chapter V Part I of the All India High Court Rules 1973 and the order dated 29.4.1976 passed by the Chief Justice in exercise of the powers under the said provision (a) are ultra vires of the 1946 and 1948 Cr. P. C. read together?

3. The facts giving rise to the reference of the abovesaid question are necessary to be noted. Late *Chawangpoil Pao* and *Abdul Aziz* appellants moved their writ for release under Sec. 302 and 307/141 P. C. before the Sessions Judge, Rampur. On condition of bail the Sessions Judge acquitted the appellants. Against the acquitted order of acquittal the State Government preferred an appeal under S. 176 of the Criminal P. C. 1973 before the Court. Along with the appeal the State/Media or private Miscellaneous Application for grant of leave for filing appeal is contemplated by S. 276/27 of the Cr. P. C. (hereinafter referred to as 'the Code'). The appeal as well as the

application for grant of leave both were filed together before the learned J.P. Judge in accordance with the general order issued by the Chief Justice in exercise of his powers under the provisions of S. 2 Chapter V Part I High Court Rules 1973. On 11.4.1976 J.P. Judge granted leave and commenced the appeal and directed for copy of notices and exhibits, necessary to the appeal, submitted by petitioner in the notice issued by the court. The accused put in appearance and filed an application purporting to be under S. 176/174-202 of the Code read with Art. 226 of the Constitution. On 19th July 1976 a submission was made before the learned Single Judge that a Judge, being Judge, has no jurisdiction to grant leave or to entertain the appeal and to issue notice to the accused as the appeal filed under S. 176 of the Code. A further submission was made that provisions of so rule 2(b) of Chap. V part I High Court Rules 1973 which creates power giving Chief Justice in exercise of his powers, or else if it is not able to be used by a District or First Judge as well as the order of 29.4.1976 passed by the Chief Justice, were ultra vires of Sec. 140 and 141 of the Code. The learned Single Judge, one of the opinions of the court was of wide impression, and the directions, referred the question for decision to a larger Bench.

3. Chapter XXXI of the Criminal P. C. (1) of 1973 provides for appeal. Section 173 provides that an appeal shall be filed by petitioner or order of a criminal case unless provided by the Code, or any other law. S. 171 provides for appeals against certain orders of the Court of Sessions. S. 174 provides for appeal to the Appellate Court. Justice understands a criminal filed by the High Court in exercise of its original criminal jurisdiction. S. 175 provides that no appeal shall be in cases where the accused pleads guilty. S. 176 provides that no appeal shall be in party case. S. 177 provides for appeal by the State Government against sentence on the ground of its inadequacy. Such appeals are required to be filed before the High Court. S. 276 provides for appeals in cases of acquittal. Section (1) provides that the State Government may in any case direct the public prosecutor to file appeal to the High Court from an acquittal or appellate order or acquittal passed by any court other than the High Court or an order of acquittal passed by the Court of Session as

review. These subject to such matters (under 5). Subsec 12) provides that if an order of appeal is passed in a case in which the offence may have been investigated by the Delhi Special Police Establishment or by any other agency under any Central Act other than the Code, the Central Government may, then direct the Public Prosecutor to present appeal to the High Court from the order of appeal. Subject, (provision that an appeal either under section 31) or section 32) shall be entertained except with the leave of the High Court. Subsec 13) provides for filing of appeal by the complainant after obtaining appeal leave to appeal from the High Court against an order of acquittal when the order of acquittal may have been passed in a case instituted upon complaint. Subsec 14) provides period of six months for filing appeal by a complainant against the order of acquittal. 5. 362 lays down that every appeal shall be made in the form of petition in writing and presented by the appellant or his pleader and in every such petition shall be accompanied the copy of the judgment or order appealed against. 5. 363 provides for filing appeal when the applicant is a jail. 5. 364 confers power on the appellate court to demand an appeal remedy after hearing the applicant. 5. 365 provides procedure for hearing of appeals which are not demanded remedy. 5. 366 confers power on the appellate court to examine appeals filed under 5. 371 to 374 it also also confers power for interfering with the judgment or order under appeal. There are the provisions which regulate filing of appeal and its hearing. Chapter XXIX does not provide for a regular appeal mechanism. 5. 376 for example judges in their bench of one judge

4. However 5. 361 provides that in a case when the Court passes an order of death the proceedings shall be referred to the High Court and the sentence will not be executed unless it is confirmed by the High Court. 5. 362 lays down that after the proceedings are submitted under 5. 361 the High Court may confirm the sentence or may set it aside or may direct the sentence or it may order the conviction and pass any other sentence or it may order the acquittal. 5. 369 lays down a statutory provision that in every case submitted under 5. 360 for the confirmation of sentence or

quitting of any conviction and sentence shall be heard by at least two judges when the High Court consists of one or more judges. This 5. 361 is the only provision under Code which provides for the hearing of the sentence or conviction. 5. 369 by a Bench of at least two judges. Its 368 and 369 do not relate to hearing and disposal of an appeal under 5. 368. These provisions have no bearing on the question whether an appeal against the order of acquittal should be heard and disposed of by a judge sitting single or by a Bench of two judges.

5. Constitution of Bench and allocation of cases for hearing to a single judge or a Bench of two judges is regulated by the Rules framed by the High Court under Art 225 of the Constitution of India. The Court has also framed rules known as Allahabad High Court Rules 1953 Chapter V of the Rules deals with composition of judges sitting alone or in Division Bench. Rule 2 is contained in Chap. V provides that judges shall sit alone or in such Division Courts as may be constituted from time to time and may do such work as may be allotted to the Chief Justice or in accordance with his directions. 5. 2 provides matters which shall be heard and disposed of by a judge sitting alone. These include Civil as well as criminal wrong out of Criminal law. 5. 3 does which refers to criminal appeals and applications in its order.

2. Examples provided by these rules or any other law the following cases shall be heard and disposed of by a judge sitting alone namely:—

1. In a Criminal Appeal application or otherwise except:—

(a) an appeal or reference in matters which a sentence of death or imprisonment for life has been passed

(b) an appeal under section 396 of the Code of Criminal Procedure, 1973 from an order of acquittal

(c) or (d)

Provided that:—

(a) The Chief Justice may direct that any case or class of cases which may be heard by a

Judges sitting alone, shall be heard by a Bench of three judges sitting alone or three or more Judges of a Bench which may be heard by a Bench of three or more Judges sitting alone or sitting alone.

Under the proposed provision a proposed appeal application or reference shall be disposed of by a Judge sitting alone except an appeal or reference in which sentence of death or imprisonment for life has been passed or is well as an appeal under S. 279 of the Code from an order of acquittal. The rules provide that a Single Judge has no jurisdiction to hear or dispose of an appeal against the sentence of death or imprisonment for life. The Rules further provide that an appeal against order of acquittal under S. 109 of the Code can be heard and disposed of by a Bench of two Judges. Provision for the rules under paragraph 3 of the Chief Justice's order that the court or courts which may be heard by a Single Judge, sitting alone may be heard by a Bench of two Judges and similarly where a case is referred to be heard by a Bench of two Judges may be heard by a Judge sitting alone.

6. In particular, if provision in the rules of the Chief Justice passed in order in 1984-1985 which reads as follows: -

In exercise of powers conferred under the powers set out in rule 3, Chapter V Rules of the Court 1985 Vol. 1, I hereby ordered that hereinafter all applications for leave or special leave to appeal against order of acquittal or proceedings under S. 176 and 176A shall be heard and disposed of by a Judge sitting alone.

The powers conferred under Chapter V, Rules of the Court 1985 Vol. 1 shall with necessary modification and adaptations be read, interpreted and applied consistent with this order. This order shall be applicable to Law Officers Bench also.

It is in particular of the above order that applications for leave under S. 176 for special leave to appeal under S. 176A is made under all appeals of an appeal heard and disposed of by a Judge sitting alone. As a result, under the Rules an appeal or reference where a sentence of death or imprisonment for life has been passed cannot be heard by a Judge sitting alone, instead it is to be heard by a Bench of two Judges. Similarly, an appeal under S. 279 from an order of acquittal must be heard and disposed of by a Bench of two

Judges but the order of the Chief Justice issued under previous provision for hearing of the application for leave or special leave to appeal by a Judge sitting alone. The Chief Justice's order in 1984 would be order in 1984-1985 treating the application for leave and special leave as appeals proceeding from the appeal itself. Under the order of the Chief Justice as well as discrepancy, whether being followed by the Court an appeal against acquittal made up an application for leave to appeal as contemplated by S. 176A or 176A is heard before a Single Judge. It and when the Single Judge gives leave and consent for appeal it is placed before Quorum Bench for hearing or acquittal or not. Doubts that of the leave is refused the appeal stands dismissed. The order of the Chief Justice proceeds on the assumption that disposal of leave or special leave application as contemplated by S. 176A and 176A is a separate proceeding from appeal or reference as order of acquittal.

7. In State of Rajasthan v. Ramesh Ch. D. 1977 52 FTR 1131 it was held that the Supreme Court for the grant of leave for leave, appeal or special appeal under S. 176 is a discretionary Court and, therefore, its jurisdiction under S. 176 is a discretionary application in which, among other considerations, the court must take into account the grounds which may be stated in the appeal along with a prayer for leave to appeal. If an appeal is made against an appeal, then to ensure an appeal should be heard if it is made only after grant of leave, the appeal may be granted. However, under subrule 10 of S. 176 the court must in appeal or special leave applications for grant of special leave, if appeal from the order of acquittal. The distinction in the language in subrule 10 of S. 176 suggests that in relation to the order of acquittal or where leave granted in a discretionary appeal, a court may apply the law to be made by the court and for the order of special leave for appeal from the order of acquittal. In further developments in the appeal it is to be particularly noted that the High Court has granted special leave, then where, after disposal of the order of acquittal by the Court under subrule 10 of S. 176, the court may apply the law to grant special leave to ensure that the court may, in such a case, proceed for leave to appeal or the court may, in such a case, proceed for appeal or special leave.

8. In *State of Madhya Pradesh v. Devadas A.R. 1982 SC 800* the Supreme Court ruled that an application for leave to appeal under rule 24 of the 1954 Code without which no appeal could be filed, is a Bench of two Judges of the High Court under the Madhya Pradesh High Court Rules. The Court further held that the single Judge had no competence to hear and dispose of questions of grant of leave to appeal under s. 113 of the 1954 Code. The decision was rendered on the constitutionality of the Madhya Pradesh High Court Rules which Chapter I of Part II of the Madhya Pradesh High Court Rules as quoted in the judgment, is also identical to s. 113 of the Allahabad High Court Rules. There was, however, no question like in the case concerning powers of the Chief Justice, to refer or direct for hearing of a case by a single Judge although under the Rules it may be competent, by a Bench of two Judges.

9. Learned counsel for the applicant placing reliance on the Supreme Court decision in *State of Madhya Pradesh v. Devadas* submitted that a Judge sitting singly has no authority to grant leave under subrule (3) of s. 24 of the Code. On a careful scrutiny of the Supreme Court judgments we find that the view taken by the Supreme Court was based on the rules framed by the Madhya Pradesh High Court. The Madhya Pradesh High Court submitted that rule 24 as provided by law or by rules or by special orders of the Chief Justice of Madhya Pradesh would be beneficially disposed of by a Bench of two Judges making an appeal against the order of acquittal. There the Chief Justice had no issued any order for hearing and disposal of appeal against the order of acquittal by a Judge sitting singly. In the absence of any such direction, the Chief Justice, an appeal against the order of acquittal by the State could only be heard and disposed of by a Bench of two Judges in accordance with the Rules of Madhya Pradesh High Court. In the instant case, under R. 24 itself also an appeal cannot be heard and disposed of by a single Judge. The present notification power of the Chief Justice to direct for the hearing or disposal of the case or class of cases, which also be heard by a Judge sitting alone, s. 24(1) and by a Bench of two or more Judges in exercise of the powers under the provision

the Chief Justice has issued the order on 28-4-1978 directing that all applications for leave to appeal have to appeal against an order of acquittal under s. 24 of the Code shall be heard and disposed of by a Bench sitting alone. The order of the Chief Justice has been issued in exercise of his statutory powers conferred on him by the Rules of the Court which does not offend s. 168 or s. 240 or any other provision of the Code.

10. Learned counsel for the applicant placed reliance on a Division Bench decision of the Court in *State v. Balraj Singh* 1971 42 LJ 494 (1971 42 LJ 494) where it was held that a petition of Criminal appeal could be dismissed under s. 422 of the Criminal P.C. 1950 summarily by a Bench of two Judges. The Division Bench on an interpretation of s. 24 commented in Chap. V of the Rules of the Court held that an appeal against order of acquittal cognizable by two Judges could not summarily be dismissed by a Judge sitting singly. The judgment is, however, founded on the Rules as they existed in 1953 R. 2 of Chapter V has gone through changes since then. The Bench had no occasion to consider the effect of proviso (a) to R. 2 in the order of the Chief Justice dated 28-4-1978 therefore the law laid down in *Balraj Singh* case is not applicable to the instant case.

11. On a careful consideration of the provisions of the Code relating to filing of appeals, hearing and their disposal, we are of the opinion that there is no express provision in the Code regarding hearing of an appeal against acquittal. Bench of two Judges s. 241 read with s. 240 cannot maintain a direction that an appeal against sentence of death and proceedings instituted by the Sessions Judge for confirmation of death sentence shall be heard by a Bench consisting of not less than two Judges. Again, it would be so after provision in the Code regarding hearing of appeals filed by the State under s. 24 of the Code by a Bench of two Judges. In the absence of any such provision under the Code it is permissible to frame Rules under Art. 224 of the Constitution providing for hearing of an appeal under s. 24 of the Code by a Judge sitting alone. A rule framed by the High Court providing for hearing of appeal under s. 24

of the Code to a Judge sitting alone is not authorized by provision of the Code. Section 36, the order of the Chief Justice dated 29-4-1978, directing that a Judge sitting alone may hear and dispose of lower matters under P. 37(1) is in violation of the Code as it stands until 24-5-1984 or 24-6-1984, either pursuant to the Code.

12. The applicants have suffered no prejudice to the appeal system since appointment for two judges heard and disposed of. They have ample opportunity to raise the appeal on issues before the Division Bench consisting of two Judges, who will now hear the same. The Single Judge has merely granted leave to the State and intervened in appeal. He has neither expressed an opinion on merit. The procedure prescribed by the Rules and the order of the Chief Justice do not constitute any privation of law and the order of the Single Judge granting leave does not infringe their any legal right of the applicants. The rule cannot be said to be in violation of the applicants that power laid in R. 2 as well as the order of the Chief Justice dated 29-4-1978 are ultra vires of Sec. 246 and 249 which empowers Sec. 246 and 249 do not relate to hearing an appeal against order of appeal. The question whether leave applies must to extent explained by S. 24 of the Code cannot be heard by a single Judge or by a Bench of two Judges, has no bearing on Sec. 246 and 249.

13. In the result we are of the opinion that provision laid in R. 2 of Chapter V of the High Court Rules and the order dated 29-4-1978 are not ultra vires of Sec. 246 and 249 of the Code. We answer the questions accordingly.

14. Before parting with the case, it is thought necessary to observe that apart from the order of the Chief Justice, dt. 29-4-1978, a new rule series of Sec. 246 and 249 of the Code, by a request reconsideration in view of the law laid down by the Supreme Court in *State of Madhya Pradesh v. Geraiah*, AIR 1982 SC 661. The order of the Chief Justice proceeds on the assumption that the grant of leave is a matter proceeding while the Supreme Court has held that grant of leave was an integral part of the appeal itself. An appeal against appeal under S. 37(1) is heard and disposed of under R. 3 available by a Bench of two Judges while

according to the order of the Chief Justice, matters are heard before Single Judge, for disposal, when the power is not given to a Bench. If the Single Judge refuses to grant leave, the appeal stands abandoned finally, although R. 2 as well as the application filed deposited an appeal against order, not accepted by a Bench of two Judges. This results in a anomaly. The remedy that amounts to a writ of *pro* and *pro* is not to be made available when the order of the Division Bench, who must suggest that appeals against order of a Bench sitting alone, are of death or imprisonment for life or that in the event of appeal, the order such applications for grant of leave, should be heard by a Bench of two Judges. In this appeal against appeal in respect of other matters together with application for leave, may be heard by a single Judge. This will need amendment of the Rules. We accordingly direct that a copy of this order be placed before the Hon'ble Chief Justice for consideration in the matter.

15. Let the papers with this case be filed before the appropriate Bench for its entry in the app. of

Order accordingly.

29th JULY 1984

K. R. MANOJAN AND N. L. NARAYAN JJ.

*Adam Smith v. State of T.P. and others*  
Respondents

H.C. File No. 402 of 1983 Dt. 17-1-1984

**Interim Sentence, App. 185 of 1983, S. 3 -  
Provisional Sentence under - Power of Court to remove**

The petition in this case was filed by a firm of H employed as a clerk in a paper mill, who pleaded with some other persons, under the name of the firm, to file an appeal against order of the court. He was detained by an order under S. 3.

Held that it is well settled that the satisfaction of the detaining authority cannot be subject to arbitrary discretionary assessment. That, in such cases, the court proceeds to determine its own opinion on the basis of the material. But it does not

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not claim that the subjective satisfaction of the detaining authority is wholly immaterial for the sake of law. While the authority has not applied its mind at all or made a case the subject's exempt privilege is, applied to support the fact as to which the scope of habeas corpus. Similarly, the grounds stated, & the reasons are based more on such as a personal human sympathy than the connected with the law's support of which the satisfaction is to be reached. AIR 1975 SC 490 and AIR 1982 SC 1597 (Pillai).

Other persons who were arrested at the spot along with the petitioner were already in detention. What he to have the petitioner on account of being a large number of people reported to officials at detention as being prejudicial to maintenance of supplies and services essential to the community? The detaining authority did not apply his mind to the facts of the case in forming his satisfaction. On the facts and concluded that the detention order was wholly unreasonable. (Para 11)

**Cases Related Chronological From**  
 AIR 1962 SC 1087 (1962 Co LJ 177) ?  
 AIR 1975 SC 508 (1975 Co LJ 446) A

**K. N. SINGH, J. —** By request of the prisoner under Art 226 of the Constitution, the petitioner has challenged validity of his continued detention in pursuance of the order of the District Magistrate, Varanasi, dt 21.11.66 issued by him in pursuance of his power under S. 3(2) of the National Security Act, 1950.

3. Three days of detention has been passed only on one ground which occurs due to the night of 18.11.66. On 19.11.66 the petitioner along with his associates Piyary Lal, Yash Vaidy, Rajend Vaidy, Sarwan Singh, Ramay, Ramdasdas, Uday Singh, Ramu Kumar and Mahan Das Singh Khan was being electricity was not working the same. On getting information Senior Officer of P. S. Kashi arrested the spot, arrested the petitioner and his companions and removed them to the north No. 600<sup>th</sup> along with a detachment. A criminal case was registered against the petitioner and his associates and Police Station Agra for offence under Sec. 379(1) IPC. The grounds further stated that on account of the failure of the water by petitioner and his

associates supply of electricity was interrupted, and several articles of food could not be prepared and some of the shops industries were closed on account of non supply of electricity. Thus affected the maintenance of supply and services essential to the community. The order further stated that with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of supply and services essential to the community, it was necessary to detain him.

4. The petitioner submitted a representation to the State Government but the same was rejected and on the recommendation of the Advisory Board the State Government confirmed the petitioner's detention by its order dt 22.11.66. It is stated, District Magistrate had issued an order on 20.10.66 Co. 1964, in exercise of his power under S. 3(2) of the National Security Act (hereinafter referred to as the Act) for the petitioner's detention, but since this order could not be approved by the Government under section 3(2) of the order of the detaining authority, it was revised and a fresh order was issued by the District Magistrate on 21.11.66 in pursuance of which the petitioner is continuing in detention. The validity of the order dated 21.11.66 has not been raised before us as per Art. 22(3) of the Act which permits making of another detention order in case the earlier detention order falls through on account of the State Government's failure to approve the same within a specified days from the date of the issue of the order.

4. The District Magistrate's satisfaction regarding detention of petitioner's detention was based on the facts stated in the order issued by the petitioner, according to which the petitioner was arrested along with others for looting and removing electricity meter poles of which a case under S. 379(1) IPC has been registered and other miscellaneous charges which has been submitted and the petitioner and others are being held before the court. The petitioner is now 64 years of age and he is found guilty of the offence for which he is being tried, he could not be sent to jail in view of provisions of the Children Act, 1960. What course action the petitioner is entitled to be let off without without acknowledgment. If the Court finds him guilty it may release the petitioner the prohibition for good conduct and



place him under the care of his parents in accordance with Art. 22 of the Children Act (Law 28) under the engaged order of the District Magistrate the prisoner has been kept in detention in prison by law for months. The legislature, policy-makers that a child and now also adolescent 14-year-old should be sent instead in the foster care (in the company of a female and other dependable persons). The legislation intended that such a child should be given opportunity to return home if and for this purpose payments have been made to the Act. The government is aware of conditions in connection with the legislature policy. Previous a distinction is quite different from quite a degree on. Previous a degree is done not possible in any manner of the nature, of punishment. The detaining authority is accordingly, under administration to consider the facts and circumstances of the case with absolute caution and care especially where where the police, justice, prepared for the decision of a child of minority, age.

6. The prisoner is a young boy of 14 years of age. He is in custody, also has no criminal VCI class. He is an employee in a restaurant in a shop. After employees in the shop he was forced prison at the time of the case, when the police arrested the gang of men, women while he was getting the wine in the shop. According to the police, the prisoner was carrying out family or went for pleasure, the maintenance of the shop. The prisoner knew, an employee was carrying wine used in the building of his employer for which he is being paid for others, under S. 70(4) IPC. The prisoner has no previous history of indulging in any criminal activity and no material has been placed before us which could indicate that the prisoner had tendency of indulging into such activities in future which may adversely affect maintenance of supply and services essential to the community.

7. The question which arises for consideration is whether detention of a child of 14 years under the provisions of National Security Act, 1950 (NSA) is proper? There may be some a bare-of account criminal activities of a young boy and his involvement in various serious offences including possession weapons, why make it imperative for the detaining authority to pass order detaining him if his nature is said to be propensities public

order or maintenance, or supplies essential to the public. In the contrary case it is difficult to conceive, that the conviction of Magistrate to do indulge in activities posing threat to the maintenance, all supplies essential to the community. There is no doubt that regarding prisoner cannot afford to be let him free in the past there is nothing to indicate that he and on circumstances to suggest that if the prisoner is not detained he would again indulge in similar activities. In these circumstances, it is difficult to conceive, how could a reasonable person have a person that the prisoner is likely to be indulging in or he made endeavours to prevent him from indulging into similar activities. The prisoner's employment in a Junior in the shop and the fact that he had no criminal history should have been considered by the District Magistrate, hence, report of the prisoner to age before passing the detention order. It appears that the District Magistrate proceeded to make a detention order on the basis of the police report in connection, detention in these circumstances, the facts and circumstances of the case, and no law applying, he said.

8. In *Ignacio vs. State*, No. of 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

It is not for a moment suggested that the power under the Prevention, Detention and Rehabilitation Act, 1950 (PDR Act) is not a detention order which could not be easily prevented, checked or thwarted would not provide a ground sufficient for detention under the Preventive Detention Act. But it is equally important to bear in mind that every minor violation of law cannot be approached in the light of an activity prejudicial to the maintenance of public order. The application of mind of the detaining authority to ensure vigilance from the freedom of the prisoner and his life, detention order is denied.

These observations were made in the background of the facts of a child, a young boy of 17 years of age, who was accused for attacking the custodian of a bus with a dagger. In the same case, the prisoner is a boy of 14 years is alleged to have been accused along with a gang of rioters were caught for which he is being prosecuted. He had no previous

to keep the panchayat functioning necessary for maintenance of supply and network essential to the community. It has been brought to our notice that others persons who were arrested at the time along with the petitioner are outside or distant. If that be so, how the petitioner on account of the being of emergency age could be expected to undergo a arrest as an future practical maintenance of supply and services essential to the community. The detaining authority did not apply his mind to the facts of the case at forming his satisfaction before upon on the facts and circumstances. The detention order is as a fully unreasoned.

5. The degree of pending detention is largely discretionary and based on opinion. If the detaining authority forms requisite satisfaction after considering the relevant material that the detention of a person is necessary, the Court has no power to in an appeal over the decision of the detaining authority. The satisfaction and the satisfaction of the detaining authority cannot be subject to scrutiny on judicial examination. The Court cannot sit in the grounds or substitute its own opinion for that of the authority. It is a duty not to say that the authority's satisfaction of the detaining authority is wholly unreasonable. In *Kishore Kumar v. State of West Bengal* AIR 1975 SC 538. Bhagwati J. speaking for the Court observed that the Court can always examine whether the requisite satisfaction is formed or by the detaining authority. If it is not, the continued detention of the detainee of person would not be justified and the exercise of the power would be bad. Where the authority has not applied its mind to all, in such a case the authority cannot possibly be said to be acting in the line as to which it is required to be satisfied. Similarly, the grounds on which the satisfaction is based must be such that a normal human being can consider connected with the facts in respect of which the satisfaction is to be reached. In the instant case, there was no material before the District Magistrate on the basis of which he could say, the satisfaction that the petitioner's detention was necessary to maintain the supply of essential services to the community. The satisfaction of the detaining authority is not based on any material which would indicate that the petitioner had exhibited tendency to indulge in or similar activities in respect of which he has been detained. The satisfaction

of the detaining authority is accordingly vitiated.

6. We accordingly allow the petition and quash the impugned order of detention of the petitioner and direct that the petitioner be set at liberty forthwith unless he is required to be detained in connection with some other case.

For me allow of

1986 ALL L J 49

R. C. AGGARWAL AND  
UMESH CHANDRA JI

Katta Singh, Prisoner v. The Additional Collector and District Magistrate, District and Revenue, Bikaner and another Respondents

Civil Misc. Writ Petition Nos. 1188 of 1985 and 1189, 1985 and 1188 of 1985 for Writs

1. A. Group 4 and 5 of 1986, 5. 47 A. added by G.P. Act II of 1985 and 5. 75, Bikaner, under R. 341 — Market value of property — Determination of — Minimum land value in R. 341 not conclusive — R. 341 not otherwise

Where, using the method of calculation given in R. 341 to conclude and find the Collector found the market value arrived at the sale decision to be invalid.

Reiterate the decision of the Collector was erroneous.

5. 47 A. supplementary Collector to deal with these cases where the parties by stamp duty deliberately understate the property with a view to defraud the Government of the legitimate revenue by way of stamp duty. It is not correct that the Collector must interpret a statement on a case being referred to him by the Sub-Magistrate under 5. 47 A(1) that the market value is in fact less than the minimum value to be determined by R. 341 and so find on that basis whether the minimum value is the market value truly or not. Similarly, the finding and power of the Collector are not confined to the minimum value given in R. 341. It is not the value more

R. 341 of 1975/76/78/79



4. As to the subject's use of the Additional Collector's office in her business, so the Court by a majority of 5, previous was:

5. In the instantability, as the was put into a preliminary order, was raised. The same was then as the petitioner could not an application for relief, as the Board of Revenue, the petitioner was liable to be, and not the one, ground on application of alternative is made. We would have accepted the preliminary objection and dismissed the same petition on that ground but as the petitioner has challenged the validity of R. 34 of the Rules framed under the Stamp Act, we thought it desirable to deal with the question. Should all Revenue has no authority to question the validity of the rule. It is a creation of the Stamp Act and has not been previously established by it. It cannot question the validity of the rule.

6. S. 47 A was enacted by means of an amendment. The subject of S. 47 A of the Act is related with those cases where previous parties, by arrangement, a landowner, or its subsidiary undertakes the property which is the subject matter of a contract with a view to displace the payment of income tax, as stated by way of Stamp duty. Before addition of S. 47 A, there was no provision in the Stamp Act empowering the revenue authorities to make, on inquiry of the value of the property, concerned in determining the duty chargeable. S. 27 of the Stamp Act laid down that the consideration of any and all other laws and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty, with which it is chargeable, shall be fully and truly as to the charge. In case a person did not comply with any law, but the instrument had taken place, the revenue authorities had no power to proceed with the challenge. However, under the Act, The Chief Commissioner was a body, with the M. 1999. The Supreme Court held that for the purpose of the 17, the value of consideration must be taken to be true as to the facts of the instrument. The question whether the purpose of determining the value of the consideration or not, must have regard to whether, persons, the instrument have observed to such, this is a matter to be

the market value of the property, which is the subject of the instrument, is chargeable with the instrument, as to the facts, and the duty to be paid by the person liable to pay the same. The S. 47 A was enacted.

7. Subject (1) of S. 47 A provides that if the Registering officer finds that the market value of the property as set forth in such instrument was less than what the market value determined in accordance with the Rules framed under the Act, he shall refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. Under sub-section (2), power has been conferred on the Registering officer to refer the case to the Collector for deciding the market value has not been truly set forth in the instrument for determination of the market value of such property and proper duty payable thereon. Sub-section (3) of S. 47 A provides the procedure which is required to be followed in cases of sub-section (1) and (2) of S. 47 A.

8. From the above, we find that sub-section (1) and (2) of S. 47 A apply to two different situations. In the instant case, the Registering Officer was of the opinion that the market value as set forth in the sale deed was less than what the market value determined in accordance with the rules, he referred the same to the Collector. Before the Collector, the petitioner had filed a claim for the applying the R. 34 of the Additional Collector found that the market value as set forth in the instrument was not true, and that, by applying the rule of valuation or computation of the market value stated in Rule 34, he determined the market value of the two sale deeds and found the stamp duty payable thereon.

9. We are of opinion that the Rule 34 which has been referred to by the Additional Collector has only the limited effect of providing guidelines. For providing sub-section (1) of S. 47 A, it is not sufficient of the determination of the market value. While determining the question whether the market value has been truly set forth in the instrument, the power of the Collector is not confined to R. 34 of the Rules framed under the Act. In case of emergency made available before it establishes, determine the market value of the

10. In order to remove such a difficulty and to empower the revenue authority, instrumented

property, which is the subject matter of the conveyance, so be more than the minimum given in the rules. While determining this question, he will have to find out the market value of the property, but not have to take into account the amount it will be required to contain, for consideration in the particular document which has been presented for registration before him and in that case the burden always is to be made by him would be whether the parties to the conveyance or instrument deliberately undervalued it for the purpose of defrauding him. It is not for him to find out that the value of the conveyance was fraudulently made although more has passed on it. S. 47 A would come into play and upon due determination the difference of duty on the amount of duty shall be payable by the person liable to pay the duty. Fraudulent conveyances all sorts and circumstances involving a breach of legal duty resulting in damage to the revenue for the cost of underpayment of a document, the persons of the parties as to whether the transfer by false statements and by concealment of that which should have been declared.

11. S. 74 of the Act empowers a State Government to make rules to carry out generally the provisions of the Act. The purpose of S. 47 A is only to avoid evasion of the stamp duty.

12. In clause (2) of S. 47 A the words important for consideration of its scope are truly and not fairly. The word truly would empower the Collector to examine whether the market value stated in the document is true or not. In conformity with the law, if a party has agreed to pay a certain amount less in the conveyance of which one of the purposes could be evasion of stamp duty, the Collector would be entitled to find the real value for which the property had been sold and not the one and after determining the correct value for which the property has been sold to make a demand of the difference of the amount of duty payable on each.

13. In *State of Tamil Nadu v. Chandrasekhar A.R.* (1974 Mad 117) while dealing with the effect of S. 47 A, the Madras High Court held:

We are inclined to think that the object of the Amending Act being to avoid large scale

evasion of stamp duty, it is not meant to be applied as a matter of fact, looking and in a haphazard way. Market value itself as we already mentioned is a changing factor and will depend on various circumstances and matters relevant to the consideration. No ascertainment as to the nature of things, possibly by looking the document, should be taken as matter of fact, it may not work as an engine of oppression. Having regard to the object of the Act, we are inclined to think that normally the ascertainment stated in the market value in a given instrument brought for registration should be taken up by correct persons, circumstances more who, it suggests fraudulent evasion.

14. S. 47 A falls in the category which was found by the Supreme Court in *Hawalaee Khosla Co. Ltd. v. Chief Controlling Revenue Authority* (AIR 1970 SC 1061) (supra) a compounder the Collector to deal with those cases where the parties by arrangements deliberately undervalue the property, with a view to defraud the Government of the legitimate revenue by way of stamp duty. It is not correct that the Collector must endeavour to determine at all cost being satisfied as to the fact by the Sub-Registrar under S. 47 A(1) that the market value is in fact less than the minimum value to be determined by R. 41 and to find out that those who have the transaction get back the market value truly or not. Certainly the hands and power of the Collector are not confined to the minimum value given in R. 41. It can hold events, records in relation to the market value brought before him in the effect R. 41 had been stated by the legislature only for the time of purpose of providing a guideline. It is not conclusive. The language under sub-section (1) of S. 47 A of the Regulating Officer is satisfied that the market value is less than even the minimum value, he may enter the document by the Collector for determination of the value of such property. This is the only function of R. 41. It is neither binding on the parties who produce the documents for registration nor on the State Government.

15. Under S. 47 A, the Collector has the power to determine whether a particular document which is presented for registration is undervalued with a view to evade payment of stamp duty. For that purpose, he would be

intended to take into account the situation prescribed by S. 341 as a consequence, that the statement laid down in the Rule is not conclusive on determination of the consequence. However, as stated above, this can be a case situation which can be considered along with others.

14. It is true that since there can be no direct inference of clandestine dealing, finding about means can be given by considering the circumstances. It may further be stated that determination of undisputedness has to be made with reference to the particular circumstances presented for registration. If collection of documents with both the names of consideration truly, the Collector will have no power to find it to have been undervalued on the particular market value. As there may be cases, the sale may take place for a lesser amount than what is the value of a market valued property. Selling property is a good thing, then the market value is higher than the actual cost and can be considered as a ground for evasion. But this fact should not be made conclusive and should be judged along with others. No individual factor such as under a certificate. The job of determination is difficult but not impossible circumstances. Truth can be found despite these facts. It is not possible for us to lay down exhaustively as to in which cases evasion could be found and in which it could not be.

15. We find force also in the argument of the petitioner's learned counsel that since S. 47A does not empower the Collector to impose penalty in the event of his finding that the market value was not truly set forth in the statement, such an order imposing the same would be against S. 47 A. For imposing penalty one must first be empowered, power can only be conferred. In the absence of a special provision making the request, are not possible to uphold the constitution of the Standing Committee that penalty could be imposed whenever and whenever the Collector under S. 47 A finds that the value set forth was not true. S. 47 A as stated above, was brought in initially to cover a case of evasion. While enacting S. 47 A, the Legislature although empowered the Collector to determine the market value of the property, which is the subject of conveyance and the duty payable. Defined a duty not under any provision

empowering the Collector to impose penalty.

16. For what we have said above, we find that S. 341 is not really working as a means for a limited purpose of providing guidance. It cannot be the purpose of S. 47 A of the Act. Market value by its nature is such which keeps on varying and changing. For the purpose of determining duty in the first instance, a statement is required that is to be taken into account. The market value has to be determined with reference to that date. In the instant case, we find that treating the method of valuation given in S. 341 as conclusive and final, the Collector found the market value mentioned in the sale deed not to be truthful. This makes the order and judgment of the Collector to be erroneous. It suffers from error of mislaw apparent on the face of the record. The Additional Collector also has committed the error of imposing penalty, in the instant case. In these circumstances, the order of the Collector is erroneous and this case is sent back to him for a fresh determination of the consequence.

17. In the result, the writ petition succeeds and is allowed. The order of the Collector is quashed. Avoids question of imposition of the discretion regarding imposition of the penalty. It is sent to the Collector to be determined. No order as to costs. Stay order is discharged.

Per curiam allowed.

1996 ALL L J 21

P S GUPTA AND R P SHUKLA JJ

Varadach Prasad Shale, Petitioner v. State of T.P. and others, Respondents.

Habes Corpus Pet. No. 1296 of 1994  
Dt. 9-9-1995

(A) National Security Act (NSA) of 1980, S. 31 - Advisory Board - Constitution for submitting its report within seven weeks - Period of seven weeks to be counted from date of detention and not from date of detention order. (Para 4)

(B) National Security Act (NSA) of 1980, S. 3 - Detention order - Grounds - Law and order and public order - Effectiveness

1996 ALL L J 21  
SC, L.C. 1996 (1) 21







1) 1984 The Advisory Board submitted its report on 7.1.1985. Eleven days of the month of Nov. 1984 added to the same days of the month of Dec. 1984 and 17th to 20th of Dec. of the month of Jan. 1985 would make thirty-eight days, out of 73 it also included that would amount to fourteen days. In any case the report of the Advisory Board was submitted a little over a week from the day of the event. The Government strongly wanted the days because occurred from the day of the disturbance to be treated as mourning from the date of disturbance until. Thus the report of the Advisory Board was submitted within some months as required by S. 2(1) of the National Security Act and the conscience on behalf of the victims has no force.

4. The second conscience on behalf of the victims is that all the grounds of decisions under are problems of law and order and not of public order. The history of such ground with a view to find out if the state has potentially to disturb the public order is made of. The ground No. 1 comprised five different parts. The first part refers to the murder of Jagan Lal Singh of Naraina by the Rajwade Trustee of Sri Han Shikhar Towers. The decision was taken on 7.1.1984 and took the form of a report on to the member. The decision was and still is a member of U.P. Legislative Assembly. Naraina, to which the said demand belonged is a part of the Constituency of the district. In a said matter part of the ground that the district appeared to the people to offer a sanction to him so that he could face people like Han Shikhar Towers and others. There is nothing in the part of the ground to indicate that the government has and more in the people of the state. At the time the appeal to the people means that the district is a strong organization to face the people like the murder of Jagan Singh. In the second part of the ground it is said that the district had a twenty thousand strong presence with the slogan of Han Shikhar Towers placed on a flag and this had part reference to the speech of the district on the occasion ground which was attended by ten thousand people. In the said meeting the district declared that he would not be associated with any of the district administration and would not attend the members of Jagan Singh within fifteen days. He also asked the people that they should not sign any

of they have to do. The district said that he could not say as to how many people he would be lost in that situation. None of the administrative officers of the district can be said to be asking the people to show a confidence. Since the district represented that as a member U.P. Legislative Assembly he could not interfere on the matters of member is elected. He not only tried to pacify the people but also attempted to discipline the emotional people of the people of Naraina who they would not indulge any emotional reaction. He, Jagan fifteen days, within the district administration to serve the members of Jagan Singh in his only made the people to be quiet in the same fifteen days but also on the full ruling in the case of the district administration. It was for the district administration to be active and efficient to serve the members of Jagan Singh. To public accounts indicate that a rational decision was and therefore it is a law for the administration to do, that there could not be a case where the district had to report to violence or the district administration had to be, then and efficient as to report, a look to the members of Jagan Singh. With the people are already emotionally charged a public opinion has to make sure, emotional members to make the district, as to what is being, that is, one of them had a view to avoid himself to discipline, that members by being out of them. In spite of the emotional evidence that the district would work, as with with just be half much, the people to help part in fifteen days or more. Thus, again, it is nothing unnecessary in the part of the ground. The slogan of Han Shikhar Towers was from the same right as it is in the house of the Supreme Court's view. Does that as of leadership in procession with the slogan of Han Shikhar Towers and forming the same was the house of the Supreme Court, the government to disturb the public order? It has no justification, today as then. The last part of the ground relates to burning of all the materials, copies of daily Jagran by the supporters of the district. A postal of the information reported through C.P.C./M.S., 1984 on 12.2.84 in the report suggests that hundred copies of Jagan Singh under direction of Ashok Lal Singh have the District Jagran papers after collecting from shops in protest of these demands. In order removed protest. These cases do not indicate, the

establishment of the dharma in the morning. Thus the Ground No. 1 does not make out a case of public disorder.

7. Ground No. 2 relates to public meeting held at Nandani Chauri on 14 July 84. The suggestion that the dharma in the morning was conducted for mass holding and mass litigation. It is not said that the dharma was present or its meaning was explained that by way a party to the dharma held in the morning. There is absolutely no material to connect the organisers of the morning with the dharma. It is also not said that the dharma participated in the mass holding or mass holding nor by has been carried in the case required a Case No. 40 of 1984 unless it is shown that the above dharma was taken or registered as the violation of the dharma. Under the circumstances, we are constrained to hold that the ground No. 2 does not depend on law that the dharma was present in the said meeting, or was a party to the dharma that it is in their implementation and therefore the dharma is not a ground for said.

8. Ground No. 3 was also for dharma was a party. The first part of it is an offence of 178 1984 registered in Case No. 11 of 1984 under Sec. 147, 149, 427, 504 and 506 I.P.C. But in this matter, the dharma is not one of the participants, nor there is any alleged or alleged participation with the dharma. There is nothing to show that the dharma was a result of the violation of the dharma and therefore the part of the ground was relevant to the dharma. The second part of the ground relates to a public meeting attended by a thousand people on 14.7.84 as held in the morning of Nandani. The meeting was addressed by the dharma who has been the morning, who would explain an action programme which would show the programme of the agitation and that the dharma would lead a strong agitation. We do not find anything in this part of the ground to show that the dharma was not the people in the dharma. Thus considering the Ground No. 1 to a whole we are of the opinion that the dharma of the dharma cannot be sustained on this ground.

9. Ground No. 4 relates to the meeting held 20th 84 when the dharma along with the

workers met at the ground all armed with weapons attacked Durga Shankar Pradya Neki Pradya, Laxman Pradya 5:00 p.m. However Durga Shankar Pradya escaped without any bodily injury was not seriously injured by the dharma and his associates. A case was registered in Case No. 52 of 1984 under Sec. 147, 149, 427, 503 and 506 I.P.C. against the dharma and his associates. The distinction between the cases of law and order and public order is one of degree and extent of the scale of the act or operation on society. It is the possibility of the act to disturb the tranquility of the life of the community which makes it prejudicial to the maintenance of public order. If the consequences of the act is confined only to a few individuals directly involved or disrupted from wide spectrum of the public, it would raise a problem of law and order only. The observed observation flows from their Lordships of the Supreme Court in *Ram Rajan Chauri v. State of West Bengal* AIR 1979 SC 609. The scope of the Ground No. 4 on the light of the above observations makes it clear that the observed Ground No. 4 relates only to law and order and it has no tendency to disturb the public order and therefore the dharma of the dharma cannot be upheld as a ground.

10. It has been urged by the counsel for the dharma that many acts be awarded to the dharma. We have given our very serious consideration and are of opinion that it is not for awarding them a made out.

11. In the result, the petition succeeds and is allowed. The respondents are directed not to keep Virendra Prasad Shukla dharma under dharma any longer in pursuance of the dharma order of 17.11.1984 passed by the District Magistrate, Gorakhpur under S. 3(2) of the National Security Act and affirmed by the State Government. It is also clear that if the petitioner's detention is required under some other authority of law the order passed by us shall not operate here to be physically released.

Forwards allowed

(1) (1) (1) (1) (1) (1) (1) (1) (1) (1)



[illegible][illegible]

There is a large literature on the effects of the size of the sample on the power of the test. The results are mixed, but generally suggest that the power of the test increases with the size of the sample.

11. Since the experts had not found that the plaintiff was "lying" on the land in issue, it was further found by the learned judge that even though the plaintiff was owner of the disputed land which was excluded from the constitutional operation of Article 101. The alleged current state had already been established by the relevant court. The civil court had jurisdiction to fix the value for the purpose of the claim was allowed to be set at zero.

**[2]** <http://ftp.cwi.nl/pub/1998/1998-06>, accessed for pictures and extracted other relevant.

19. The balance of appendices it was argued that the parties to provide, none of the issues is determinative, are the permanent results of the phase and not the facts, process during the proceedings. The *Chapman* solution was placed on *Minister of Health v. Partridge*, 11 Edw. 2d 414 at 414 (Partridge reported in, 11 Edw. 2d 414, 415, 1911).

14. It never was also proved upon him either. Major reported to CPT at G-2 HQ in support of the conviction that regardless of whether or persons who are used as assets may or cannot reach their

and a direct, general method can be used to solve the problem.

In the support of the commitment that the applicant Court would not support a finding that the designated funds were illegal donations received by plaintiffs when such a finding was not supported by the plaintiffs on points in dispute, we placed a plain-text note in the "Comments" field of Robert Noyce's profile on AIR 1704 P. 17 and Randolph Noyce's linked page, as provided on AIR 1704 P. 17.

■ Thus the main reason not to stand on behalf of applicants was that the effort for development was too small on the vast scale of America's gross productivity for investment and living under Section 236 and 1-1 F. Zimmerman (Western and Land Reforms Act 1951 No. 1 of 1951) Section 114.4, hence the requirement of such use for the public good. The character of the building, *gr. Alaska* had not been considered by Applicant's Committee but it is the only design submitted out of 147 of the placement plan. No other plans showed any form of structure and with design for appearance of preservation for a civil society in a public building.

(7) In several instances, the appellants also pointed upon their Affidavit, "Matters Brought Forward" reported in P.O. #21 for 1970, which is the matter that terminates one of the proceedings,  $\alpha_{10}$ , and a subsequent termination of  $\alpha_{10}$ , as well as that and in fact, further than the case is not comprehensible, the Court's case and use, it appears, of an order was created by the Court for the same reason as appears above.

18. Learned Advisors for populations who relied upon Chinle's Salt & Shovel Company reported to FIC's AICPC (A) in support of his statement that on a case-by-case basis, the individual physician had to plan for each patient, rather than by a blanket order of 100,000 glass syringes, and that the distribution to a community was by physicians and drug stores, and that the distribution was not for personal medical use, would have been of no benefit.

H. A look at the levels of that case shows that there was a dispute regarding the correct interpretation of questions on administrative and safety disputes, was presented in the Board of Directors. The real cause of action was the decision was a *dispute* was a *dispute* on the level of dispute. The plaintiff

man-splashed the river and taught a permanent impact on work is progress to shed the just allocation of the corporate Court and work the security in the Civil Court. Such device was held as inconsistent.

20. *Lowland Angham* has applicants herein ruled upon a district bench case reported in *Chandigarh Mail* & *States Lal* 1971 RD 82 & 1971 SC 2840. In this case a suit was brought by plaintiffs applicants who were the most prepared to the the smaller for permanent acquisition of the the applicant for recovery of possession. It was held that the suit was cognizable by Revenue Court and Civil Court lacked inherent jurisdiction to consider same.

**JH** On behalf of respondents, it was pointed out that such questions are ones not against the learned High Court the appellate court, for objections about the participation was raised at the earliest and before it was shown that there was violation of section 26 Section 21 of Code of Civil Procedure vide *Geno of Supremacy Mart v. U. Prasad* (supra) reported in (1974) 4 All LJ 56. In such a case there, was a dispute about the place where the suit had to be filed and an objection was made by the defendant, about the participation of the court. It was held that such objection could not be raised for the first time before the appellate or revisional Court. Learned Advocate for respondents also cited *Lotkya Singh v. Ram* (See Singh reported in 1973 All IND 101) in support of his contention.

II. *Katrina Chant v. Maryann Singh* reported in 2001 AWP, did not also refer to or explain the underlying principle. Under 1, NYA 441 P. *Remondy, Spillman and Land Reform Act* which reads: section 441.

**S. 711 A. 2 A.** And says down that it is not open to a party to raise the question of grounds of jurisdiction within the objection was taken by it in the court where made, or the earliest possible opportunity, or before, the relinquishment of venue. There it is, it is saying, it is saying, that party has to raise it in the court where it first has been taken and put in, and sufficient or grounds at the First Court being sufficient of the act. Two conditions must be provided before the question of jurisdiction can be raised before an appellate or symmetrical Court. First, the objection must be taken before the trial court, or the earliest opportunity.

eventually, the price must show that there has been failure of payment on account of the non-payment of the first class.

**23** I have carefully considered these rules and agree to them.

28. The comparison of facts and law above shows that the only valid weight to be placed was for personal equities. The relief for equities of placement was added subsequently through an amendment and the courts below consistently found that the plaintiff was disappointed from a promise of job. No dispute, the one-ply theory, the relief for personal equities was not available by a personal contract.

<sup>78</sup> The point of prejudice was stated before the trial court also. The contention based on behalf of appellants was that the trial court had no jurisdiction to set aside its cancellation of the action with its award of damages, as involved in it, however many were, all the attorneys of defendants' counsel of the various participants in the events that the action sets forth already been granted by the superior court and the disbursement was being withheld from the estate of Vincent J. Di Leo, Jr. (Kane and Ayr).

[illegible]

In a dissenting view, the recorded name under a trademark and such a recorded name holder is described in paragraph 4 of the obligations that it should not use a name only 5.270 E of the U.P. Act 1 of 1971 in its trademark. Merely because, on the said statements, a related use (they are, apparently, the plaintiff's recorded name, belonging to a name for the said that a person, continuously, about a name, name, is described

In the present case, the plane II was parallel to a square habit plane in the reverse, garnet, reaction. A detailed discussion of mechanisms related to

times, found to be a fact by the court below. There is no dispute that the circumstantial evidence should be compelled to fit a set for declaration in the revenue court. On the facts of the instant case, the plaintiff's contention is not obliged to be a declaration but under Section 125-B of the U.P. Zamindari Abolition and Land Reforms Act, 1948.

The Civil Court had jurisdiction to try the suit for permanent injunction restraining defendants from interfering with the possession of the plaintiff over Baramedian Pota.

27. In the instant case, plaintiff had no grievance against village records and as such was not under the necessity to file a suit for declaration in a revenue court as held in *Prasanna v. Sarwan* reported in 1970 RD (HC) 214 which passed :-

U.P. Zamindari Abolition and Land Reforms Act 1 of 1948, § 125-B — Suit under § 125-B — Maintenance in revenue court — Legal position has to be ascertained if plaintiff has grievance against village records — Suit for injunction restraining defendants from interfering with plaintiff's possession over the plot is not — Parties in revenue papers representing plaintiff's claim. Material stands against Gao Sahab or State Government not plaintiff obliged to do so — Suit would be cognizable by civil court.

The legal position appears to be that where a plaintiff has grievance against the village records which are maintained by the State Government and Gao Sahab the suit will be in a revenue court under § 125-B and in other cases where plaintiff's title shall also be impugned as a defendant but if the village records support the claim of the plaintiff, the suit will not be under § 125-B but will be cognizable by a civil court unless the plaintiff's right is disputed by a third person.

28. A similar view was taken in *Lal Singh v. Board of Revenue, U.P.* [1970 RD (HC) 4] which passed :-

U.P. Zamindari Abolition and Land Reforms Act 1 of 1948, § 125-B — Maintenance in revenue court of objection under Q 21-B, S.C.P.C. — Suit contemplated under Q 21-B is not cognizable by Civil Court and suit under § 125-B is not cognizable — Limitation for such suit commences

In *Harmandas v. State Army* reported in 1969 ALJ 677 a was held

It is submitted, now against the landholder under the State Government and the Gao Sahab which has been taken away from the possession of the civil court and not given now for declaration. To put it differently, if it be found that the maintenance declaration being submitted against the landholder in the revenue court the State Government and the Gao Sahab, and they are necessary parties to the suit, the civil court shall not have the jurisdiction to interfere with a suit for declaration unless it is effectively ruled for injunction with regard to that plot being on the map of the revenue has been passed for that of the State Government that the land holder or the State Government and the Gao Sahab in the case may be, does not challenge the status of the plaintiff or on the basis of the revenue existing in the village record the plaintiff continues to enjoy the claim claimed by him, then the declaration cannot be deemed to be against the landholder or the State Government and the Gao Sahab and consequently shall be cognizable by the civil court inasmuch as its jurisdiction not being unreasonably taken under the U.P. Zamindari Abolition and Land Reforms Act.

The plaintiff sought the status of a holder and consequently a suit not cognizable for him to sue the State Government and the Gao Sahab for a declaration of his rights in U.P. Where it was not necessary for the plaintiff to sue the State Government or the Gao Sahab, he could sue for a declaration against a third party without impugning status, and such a declaration suit could be taken cognizable of by the civil court. In the circumstances, the civil court could entertain a suit for injunction against the third party alone based on the same version of facts.

29. A further view also shows that an order for declaration was sought by plaintiff against Gao Sahab or the State Government in this case. In *Bhagwan Singh vs. Adul Qasim Jodha* reported in 1972 RD (HC) 145 a was was held under § 1 of Specific Relief Act for recovery of possession. It was held that § 1(1) of U.P. Z. A. and L. R. Act did not operate as a bar to maintain and was available by civil court.

30. National lower appellate court relied upon a Full Bench case reported in *Ravi Anandh v. Han Shambhu* 1968 ALJ 1170.







being affidavits of a number of persons in support of his contention that he had been living in the premises in question with his younger brother Dr. J. P. Mulhargy. He also filed a good number of documents to show that he was in possession of the premises in question at his first night there before the death of Dr. J. P. Mulhargy.

3. Opposed page No. 1 on the other hand, stated that the petitioner was an unauthorized occupant in the premises. He, too, by members of Dr. J. P. Mulhargy did not have to do with him. It was pointed out by the Trial that the petitioner either lived with his son as late as Father's death and then he stayed for a short period in some house near Chesham Road, Bangalore. Petitioner's son who was employed in the military was also said to be in possession of a house in the Cantonment area of the city. The Trial also placed much a need for the house in question and stated that it may be returned to the house. The Additional District Magistrate (Civil Supplies) East District Lockman on a careful review of the material on record allowed the plea of the petitioner and the order in 20.4.74 by which the vacancy was declared in the house in question was withdrawn. The relevant application as also the application for allotment was dropped to record. The order was challenged by the Trial in the revision filed under S. 75 of the Act. It was allowed by the learned IV Additional District Judge on 20.6.77 with the finding that the petitioner shall be treated to have implicitly surrendered his vacancy and that Dr. J. P. Mulhargy alone was the owner and on his death case he did not have any heir as he was a bachelor, the house became vacant and available for release as also for allotment. The learned IVth Additional District Judge consequently transferred the case to the Additional District Magistrate (Civil Supplies) for further proceedings in accordance with law (transfer, stay of vacancy, etc.). The judgment was thus challenged in the petition.

4. Learned counsel for the petitioner contended that the vacancy rights had also developed on the premises in his capacity as brother of Late Masan Lal Mulhargy. He was the legal guardian of the petitioner in question and the petitioner being a minor, was in possession jointly with his brother Dr. J. P.

Mulhargy, the premises were his own. This being so, the release application filed by the Trial respondent page No. 9 as also the application for allotment made by various prospective tenants were liable to be rejected and the learned Additional District Judge was wrong in concluding the case in the Additional District Magistrate (Civil Supplies) for consideration of their applications. It has also been contended on behalf of the petitioner that the learned Additional District Judge was patently in error in blindly following the decision of the Court in *Sharma v. Additional District Judge Meerut 1992 (3) P.L.R.C. 702* (1992 UPLC 702) 41 which was not applicable in the facts of the case as the petitioner, though on the transfer the son of the petitioner was also at that time, being paid by his brother Dr. J. P. Mulhargy, could not be said to have implicitly surrendered his own rights.

5. Learned counsel for the Trial has on the contrary submitted that the findings recorded by the learned Additional District Judge were findings of fact which were based on a proper evaluation of the evidence on record and in such a case not open to the court to interfere with these findings in its present proceedings under Art. 226 of the Constitution and a writ of certiorari cannot be legally issued to quash the judgment of the learned Additional District Judge. It is also been submitted that the findings recorded by the learned Additional District Judge were correct and the petitioner without any objection of the case shall be deemed to have, in plain words, surrendered his vacant right with the result that on the death of Dr. J. P. Mulhargy, the premises in question became available for release/allotment.

6. A house which contains transfer of all interest in immovable property, its heritable right. Even a lease, from month to month is a heritable interest. Then, when a tenant dies his rights will be followed by his heirs.

7. It has been held by the Madras High Court in *Krishna Srinivas Narayana Acharya A.R. 1961 Mad 161* that where, there was a lease to brother of a single person, as a tenant the interest of this person in the land lease would on his death devolve on his heir. The liability of the lessor upon the tenant will be a joint liability. This is in consonance with the





































1986 JUL 12 11  
G. T. MALBRATT, J.

P. C. Rapier: Applicant's Affidavit and  
affidavit of Opposite Parties

Original Return No 1261 of 1986 (20/21/5  
para 7)

**CriminalFC, dated 1986/5/197** — Section  
19 provisions — Accused, a Sales Tax Officer,  
while conducting survey, allegedly abused and  
the accused's behaviour of hostility and  
abused power alleged — Offence committed  
in during discharge of official duty — Section  
of State Government is necessary

While it is a complaint a Sales Tax Officer  
was alleged to have abused and threatened  
the labourers paid it at the rate of his cost  
and also about the content of the booklet  
while conducting survey during his official  
duty the offence committed by the Officer by  
abusing, would be due to the course of  
discharge of official duty and nature of the  
task given would be necessary. It is correct  
that when upon the contrary was no part of his  
official duty of a government servant. The  
duty was however not sufficient for holding  
that the accused is prosecuted under S. 197  
was not required. The question was as to  
whether the accused at the time when the  
offence is alleged to have been committed by,  
he was acting in pursuance of or in the  
discharge of his official duty. As a matter of  
fact conducting of an offence is no part of his  
duty of a public servant yet the language of  
S. 197 presupposes that the public servant can  
commit an offence while acting or purporting  
to act in the discharge of his official duty. The  
spirit of S. 197 is to guard against criminal  
proceeding against public servant and to see  
that no proceeding is started against them  
unless there are good reasons to suppose that  
there is some ground for the charges. It is  
public servant commits a criminal offence to  
have the power privilege but at the of his  
official and is alleged to be committed while  
he is acting in the discharge of his official

duty the State will not allow him to be  
prosecuted without its sanction. 197 Cr. P.C.  
1902 (1-6) Affidavit 1976 (1/1/1986) 1976  
(1/1/1986)

**Civil Return Criminal Proceedings Form**  
1976 (1/1/1986) 1-6 1976 (1/1/1986) 1-6  
1976 (1/1/1986) 1-6 1976 (1/1/1986) 1-6

**Written Notice for Applicant's Standing**  
Original for Opposite Parties

**ORDER** — The only point involved in  
this criminal case is a violation of the  
P. C. Rapier when a Sales Tax Officer could  
be prosecuted in this case under S. 197/198  
1 P.C. whether Government's sanction under  
S. 197 Cr. P.C.

2. There were deposition by applicant in  
a Sales Tax Officer and then on 14/1986 to  
invest the booklet of which Malbratt  
opposite party No. 1 is a partner and  
conducted the survey. Some of the partners  
was present in the booklet at that time and  
only some servants and labourers were present.  
On 7/1986 Malbratt filed a complaint  
against the said Sales Tax Officer alleging, that  
as at least in the booklet the accused Sales  
Tax Officer employed them the accused and  
that the accused told him that they were not  
present the accused wanted strong evidence  
the servant asked him not to abuse, he called  
abuse for the workers as well and further  
threatened that he would see them and will  
punish them in the Sales Tax case. It was the  
alleged that in that way the accused wanted  
his power and threatened offence under S. 197  
and 198 1 P.C.

3. After recording evidence under S. 197  
and 198 Cr. P.C. the Magistrate recommended  
the accused under S. 197 1 P.C. The accused  
moved an application seeking leave now under  
S. 197 Cr. P.C. alleging that he could not be  
prosecuted without proper sanction of the  
State Government under S. 197 Cr. P.C. The  
Judge found leave with the learned Chief  
Justice. Magistrate when held that sanction  
was required before bringing prosecution of  
the accused and hence dropped the  
proceedings. The complaint was up in  
motion before the Sessions Judge when work  
is contrary and holds that the act of survey  
and using force was no part of the official

\*Agreed judgment of G. S. Sharma, J.  
and Sessions Judge, Meerut dated 1-  
8-1986

jury of the International Labour Commission under S. 197 Cr. P.C. was suggested. Accordingly he set aside the order of the Chief Judicial Magistrate and directed him to proceed with the trial being aggrieved the accused has filed for protest motion.

4 Despite sufficient protest of person an opposite party No. 1 Rahmatullah who was complainant of the case he has not either forward to commit the offence. I have however asked learned Counsel for the respondent and the Assistant Government Advocate appearing in the case.

5 I am in doubt as to the effect that the charge by the learned Sessions Judge was made, erroneous and that the allegations made by the complainant clearly show that the offence alleged to have been committed by the accused/Sale Tax Officer was committed while he was carrying out his duty as set in the discharge of his official duty. It was contended that the accused had gone to the locality of the complainant for conducting survey and that survey was done by him. The complainant also set aside the surveillance order which the Sale Tax Officer started against the servant and labourers when they told him that the survey was imaginary. On the fact of it the allegation contained in the complaint appear to be wrong. It may be that while talking to the servant and labourers the accused might have behaved rudely and he might have conducted the survey and talking to the servant and labourers in his official capacity as Sale Tax Officer and as such he had been carrying out his duty in the discharge of his official duty. The learned Sessions Judge has observed that showing or threatening was not a part of the official duty of the accused and hence omission of the Government under S. 197 Cr. P.C. was not necessary. Assuming that the applicant did what he is being accused of him perhaps it will be necessary difference if he did as the bar of S. 197 Cr. P.C. is concerned. The language of the section clearly is that no court can take cognizance of an offence alleged to have been committed by a public servant after offence is committed by his office during or purporting to act in the discharge of his official duty. It is not matter if the acts were outside necessary for the discharge of the duty. What has to be found

out is whether the act and the official duty were so inter related that officially duties necessarily than it was done by the accused in the performance of the official duty. It might possible in cases of the results and consequences of the situation. In this case, I am fully supported by a document of this court in the case of *Indulash Nath v. State*, 1970 All Cr. C. 102 (1970) 4 L.J. 504. I do not describe the document of the Madras High Court in the case of *Indulash Nath v. P. Rahmatullah*, AIR 1970 Mad 104. The facts of these two were similar with some differences. In the first case the complainant says that an Assistant Collector, Customs was alleged to have threatened and intimidated the complainant. The complainant had illegally detained him at the check post for several hours and entered his chambers by passing him in fear of his life. It clearly states were could not be said to be part of his official duty, yet it was evident that they had been committed while he was acting in the discharge of his official duty. In this second case the accused is a defendant of a Police Officer Constable and the complaint directed in the direction of police by the clerk of the court. Whereupon was said that he accused about the complainant and alleged him another back and on his protest he and used his force and threatened to beat the complainant with the cane. It is evident that the accused was acting in his official capacity and could not be prosecuted without sanction of the local government. The law has given it, above cases fully supports the applicant's contention.

6 In the instant case it may also be pointed out that as the complainant it had been mentioned that he, acting in that manner the accused removed his power. This further confirms that according to the complainant himself the accused was acting in the discharge of his official duty as a Sale Tax Officer although he might have exceeded and abused his power.

7 As already mentioned no one has appeared to contest the charge on behalf of the respondent No. 1 Rahmatullah the complainant. The learned Sessions Judge immediately committed above any law in which on the facts under in the case at hand is

conduct may or may not have been lawful. The same subject to the learned Supreme Judge was clearly erroneous. It is correct that disorderly conducting was not part of the official duty of a public servant. Yet, this alone was neither a nor sufficient for holding that the prosecution's instruction under S. 19 Cr. PC was not correct. The question was not whether the accused at the time when the offense allegedly had been committed in fact was acting or purporting to act in the discharge of his official duty. As a matter of fact, conducting an offense was not part of the duty of a public servant, not the language of S. 19 Cr. PC, presupposes that the public servant was still acting officially while acting in purporting to act in the discharge of his official duty. The object of S. 19 Cr. PC is to guard against venal proceedings against public servants and to see that accusations against them are founded unless there are good reasons to suppose that there is some foundation for the charge. His public servant cannot a common offense because peculiar privilege that if one of his official acts is alleged to be committed while performing in the discharge of his official duty, the State will not allow him to be prosecuted without reasonable investigation. Even on the mere allegations of its complaint, the appellant was acting in the discharge of his official duty when he is said to have committed the alleged offense, although brought here excessive means for people at each public service. Hence the appellant could not be prosecuted without proper sanction of the State Government under S. 19 Cr. PC. The revision court's error is corrected.

8. In the result the revision is allowed. To order dated 14.8.81 passed by the learned Session Judge is set aside and proceedings in Complaint Case No. 32 of 1980 (Reference) is P. C. Bugar under Section 489.304 I.P.C. are hereby quashed for want of valid sanction under section 19 Cr. P.C.

Revision allowed.

# 1986 ALL I 103

G. P. SAKSHI & J.

Worse than Appellate - Durga Dash Respondent

Second Appeal No. 1 of 1985 Cr. 103 of 1985

**U.P. Public, Freedom (Exercise of Unlawful Occupancy Act 1972) S. 2(2) - "Unlawful occupancy" - When does not amount to - A. allotted quarters - B. also relative of A. occupying quarters once given to allotment, abiding by allotment order and permitting A. to occupy it - B. occupation thereafter nothing but person's on behalf of A. - Therefore, B. could not control that his treatment as Unlawful occupant of the quarters as an action was taken against him under the Act and A. was not entitled to file suit for eviction of B.**

(Para 2)

P. S. Tripathi for Appellant

**JUDGMENT** - Heard the learned Counsel for the appellant and perused the judgments of the Court below.

3. The undisputed facts are that the plaintiff is an officer of post rank No. 124, Lakshmi Chandra Vishwanath Karver. The defendant is a close relative of the plaintiff. He was living in the quarters at Lucknow which were given to the allotment on behalf of the plaintiff. When the quarters were allotted to the plaintiff, the defendant abided by the allotment order and permitted the plaintiff to occupy the quarters. The lower appellate Court has rightly approved the conclusion of the defendant that he continued to be an unlawful occupant of the quarters as no action was taken against him under the U. P. Public, Freedom (Exercise of Unlawful Occupancy Act, 1972) When the defendant abided by the allotment order and permitted the plaintiff to occupy the quarters, his consequent deterioration could not be anything but person's on behalf of the plaintiff. The plaintiff gave a notice calling upon him to vacate the quarters but he did not do so. The plaintiff was taken his right to file a suit for eviction and the lower appellate Court has rightly decreed the suit. The defendant is













authorities by S. B. Durgam commission which is aimed at proper and efficient administration and management of the institutions. In 1980 stip. implication could not be read that the liquidator intended to completely take over a private institution. Further the September proper and efficient administration and management of an institution is a charge which was imposed by S. B. D. Order, Act. (Para 1-3).

(E) Constitution of India, Art. 296 - **Word position** - Conduct of party - Manager of Committee of Management provided by B. P. Intermediate Education Act was challenging different procedure as amended scheme of Administration for holding election for appointment of Committee of Management immediately after closing of a - Scheme, implied, approved by Committee of Management - Manager also following same procedure on interim of scheme - In case of conduct of Manager, he is precluded from challenging amended scheme (B. P. Intermediate Education Act (2 of 1982), s. 18A) (Para 20)

Cases Referred Chronological Para:  
PIL 111/1987 (1988) 47, 70-71a (P)

3.5. Approval for Petitioner, Student, General for Respondent

11 & SETU, P - By the petition under Art. 226 of the Constitution petitioner 2 Chatur Singh sought relief against the order of the Deputy Director of Education, Muzrai respondent 1 & 3th Jan. 1984, appellant, for Satya Prakash Tatyul Asan Deputy Inspector of Schools respondent 3 as Manager of the institution known as Kuan High Secondary School, Baruch and asking him to offer building for his school, to build fresh school and to constitute a new Committee of Management for running the said institution.

2. Kuan High School, Madhyani, Valiyala Bapah was educational institution established under the provisions of the Intermediate Education Act, 1982 institution referred to in the Act and its affairs are to be conducted in accordance with the scheme of education framed under the provisions of the said Act. The Scheme of Administration issued by the institution is approved by the Deputy Director of Education, Muzrai on 14

1984. Subsequently, the same was read with 12-13-12-1984 amended as to some extent in accordance with the provisions of the Act as amended by the Intermediate Education Act, 1982.

3. Petitioner Chatur Singh claimed that in the month of June 1984 one of the members and the office bearers of the Managing Committee, as envisaged by the, High School of Schools of School system established on 14th April, 1984 in which Sri Chatur Singh was elected as the President and the petitioner was elected as the Manager. In the same meeting, the Managing Committee was elected as the Managing Committee. The petitioner was elected as the President of the Managing Committee as provided by the scheme. Institution for a period of three years or till their successors were duly elected. In the month of January, 1985, the petitioner initiated disciplinary proceedings against the principal of the institution and made an order placing him under suspension. The principal of the institution then addressed a letter to the District Inspector at Baruch on 5.2.1984 demanding that the order placing him under suspension be withdrawn by persons who claimed to be members of a Managing Committee, which had no legal existence, and that he continued to be the principal of the institution. Along with the demand letter the principal also submitted a list of persons who according to him were the members and office bearers of the Committee of Management elected in January as such. The District Inspector of Schools vide his order dated 21.2.1984, respectively Sri Lal Singh respondent 4 as Manager of the institution.

4. Petitioner 2 then made a representation to the Deputy Director of Education contending that Sri Lal Singh who had been reappointed as the District Inspector of Schools and Manager of the institution was not a member of the society and that since meetings called by various persons to remove him from the office of Manager were irregularly proposed to have been passed on 11.2.1984 were absolutely illegal and void. He therefore prayed that the order of the District Inspector of Schools (D. 21.2.1984) be set aside and the list of members and office bearers submitted by the petitioner on 2.2.1984 be treated as valid and void.

5. The Deputy Director of Education took









1981 ALL. L. 1794

**B. V. VINOD AND A. S. SRIVASTAVA, JJ.**  
Brijesh Prakash, Prisoner in State of Uttar Pradesh and others vs. respondents

Indian Courts Press. No. 648 of 1981. D. 10-6-1981.

14) National Security Act 1958 of 1958, S. 3 — Opponents to make representation — Ground of participation in discussion — Identification profile built — Six arrests recorded under S. 144, Cr. P.C. and classification must not applied to discuss — Effective opponents to make representation denied — Question under a raised (Commission of India, Art. 220)

(Para 12)

(15) National Security Act 1958 of 1958, S. 3(1) — Previous discussion — Legality — Grounds of arrestation remain on the individual and of filing a person in discussion between two parties during enquiry by A.D. G. Prakashia relating to its constitution system — Issue is suggestive that discuss a society endangered public peace and tranquility or that action was directed towards causing mischief of public — Detention is released as grounds having satisfaction that activities in public order (Commission of India, Art. 220)

(Para 13)

**Case Related Chronological Facts**

(Para) Indian Courts Press. No. 1174 of 1981. D. 17-7-1981 (AIR 1981 Supp. 1, 304 of C. P.

6

31) Raja Indraprastha By Court Advocate for Respondents

**K. N. SINGH, J.** — Brijesh Prakash the petitioner has by means of his petition under Art. 226 of the Constitution challenged validity of the detained discussion.

2. The petitioner is under detention as participated in an order passed by the District Magistrate, Aligarh, dt. 17-7-1981 against a group of persons under S. 144 under National Security Act 1958 (hereinafter referred to as the Act) as he manifested charged petitioner's disturbed and dangerous with a view to preventing him from doing as he may choose (provision for public order in the following

CC 25, 1981, 264/1981)

provision. The grounds mentioned therein are as follows:—

(1) That on 15-7-1981 the night of 9-10-81 at 10.30 along with some associates entered the house, at Khat Shikhar mandali of village Chhatra police station Muz and committed by murder 1st year the student village school was 1st year with some and the people were arrested which affected the public order adversely. A report of the incident was lodged at the police station by Khat Shikhar under S. 307 S.P.C. and a case was registered (hereby investigation the case was continued on 16-7-81 on 22-7-81 charge sheet has been submitted to the Court affected parties, and before the District Judge.

(2) On 21-7-81 at 1981 in Khat Shikhar Prakash, Khat Shikhar Police Station Muz arrested one at Muz Road has stated. On a watch of a person a country under 10 more persons and two cartridges were furnished in connection with the incident. Case No. 1981-82 was registered and after investigation a charge sheet was submitted against you to the Court (hereby a case material defence dep. against you as a result of which your wife stops (due to the Court). By your the act of moving towards public order and public order, you caused apprehension on the mind of the people as a result of which public order has been affected adversely.

(3) In the night of 16-7-1981 at about 12:30 a robbery was committed in the house of Khat Shikhar Prakash. Khat Shikhar wife was killed. A report of the incident was lodged at the police station 19-7-81 under S. 302 I.P.C. (hereby investigation the case was converted into S. 306 I.P.C. During investigation on your name case material only on your also classified as the defence proceedings. The effect of your such during you has affected the public order adversely. The case is pending and before the Court.

(4) On 7-10-81 at about 4 PM you committed murder at Nohawath Prakash and Son, Nohawath who was going with him on a cycle in driving them on a motor cycle on the road Muz Khat Shikhar near village Chhatra. Nohawath Prakash died immediately on the spot while Son Nohawath was taken to the hospital. As a result of this incident the locality was gripped with fear and terror. A report was lodged at the police station

and affid investigation allegations has been submitted to the Court on 14.12.11 and is pending trial before the Court.

On 06.12.11 at about 100 pm some enquiry was being held by a D-2 Ramkumar Rajguru Pandey of New block at a house belonging to a self-denominated student Ravi Ram Dubey, Pradhan of Gaurabha. During this enquiry Ravi Ram was attacked by four brother Ravi Nath Pathak, also Rishi and Shashi Nath. In Pathak and his brother by law. These persons were arrested along with Ravi Chandra, brother of Ravi Ram, Pradhan of Gaurabha. When they were got arrested and fired gun shot on Ramchandra Dubey with the loaded gun of the dead with the machine killed him. As a result of gun shot injuries, Ramchandra Dubey died. This happened act is at committed at 100 pm in the presence of the general public of the village as a result of which terror and law was created which allowed public order adversely.

On the above grounds the District Magistrate by his order dt 1.10.04 stated that he was satisfied that Brijesh Pathak was likely to act prejudicially to public order and that it was necessary, inhibition him for the maintenance public order.

3. The said order was passed under sub s. (3) of S. 3 of the National Security Act 1950 and the petitioner was detained on 2.10.04. On 22nd Sept. 1994 the petitioner submitted representation to the State Government that the same was rejected on 25.11.04. On receipt of the recommendation of the advisory board the State Government confirmed the order of detention on 24.11.04.

4. The petitioner has alleged that he was not afforded opportunity of making representation as required by the law, namely the spirit of grounds Nos. 1 and 2 statements of witnesses made under S. 161(1) Cr P C and copy of identification memo, impugning the petitioner in the motion alleged in the said grounds were not supplied to him. These materials were not supplied with petitioner as a result of which his constitutional right to make representation as contemplated by Art. 22(1) of the Constitution was violated. The detaining authority namely the District Magistrate Allahabad has filed his affidavit but in his affidavit he has not denied the

petitioner's statement that statements of the witness as recorded under S. 161 Cr P C and the identification memo on the basis of which petitioner's arrestment withal statements referred in grounds 1 and 2 were submitted by the detaining authority were not supplied to him.

5. Ground No. 1 relates to incident of assault alleged to have been committed at the house of Ravi Chandra on 06.12.11 which caused the petitioner a commotion of a disorder and a loss of Ravi Rajguru Mahapatra and night of 06.10.11.1992. In the first order was not lodged in respect of both stages namely the petitioner was not named. The investigation was however issued in the police during investigation on the basis of the statement of a witness recorded under S. 161 Cr P C. Further the petitioner was put up for identification and the witness identified him. On the basis of these materials the police filed that the petitioner as implicated in the commission of assault. It is alleged two students took charge there was violence against the petitioner in the Court. Though copies of the F.I.Rs. relating to the said incident of grounds 1 to 4 and it had been supplied to the petitioner but the copies of the statements recorded under S. 161 Cr P C involving the petitioner in the incident as well as copy of the identification memo were not supplied to him. The memo of the witness recorded under S. 161 Cr P C and the identification memo withal and relevant material on the basis of which petitioner was found to have participated in the incidents and as such it was necessary for the detaining authority to have supplied these materials to the petitioner in order to afford him effective opportunity to make representation. Since these materials although were not supplied to the petitioner the detaining order on the basis of grounds Nos. 1 and 2 stands vitiated.

6. Learned counsel for the petitioner then urged that the facts stated in grounds 3, 4 and 5 have no impact on public order stated they relate to law and order. Ground No. 3 relates to the petitioner's arrest on 24.9.02 and after arrest he was found in possession of an unlicensed IT from country withal paid along a stolen car badge. The petitioner's arrest up to the time when he was requested by the Court. Ground No. 4 relates to membership namely in Vishwanath Pathak and San. Mahapatra in village Chhapra, while ground No. 5 relates





for and the vote is considered as established. The vote will not be the result because the no vote collected was not deposited in a proper account. AIR 1981 SC 1285 AIR 1981 SC 417 AIR 1979 SC 323 and AIR 1979 SC 754-544 (Para. 2) P. 79.

When the facts and circumstances, were the fact that the accounts had received the funds out of the money paid by them as former for and the former who were liable to pay, should make sure, that the general journal from the audit, was, listing the list the amount of money required for collecting the fee would be and to be as added. It was not necessary that the person liable to pay must modify some special benefit or advantage for payment of the same. (Para. 4)

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Siddhanta Prasad, for Petitioner A. B. L. Srivastava and Standing Counsel for Respondent.

1980 AIR LJ 1/7 1 (2)

**B. C. AGRAWAL, J. —** These were writ petitions and objections to the question of validity of enforcement of the order Rule 12 (1) of the U. P. Census Enumeration Rules 1951 (hereinafter referred to as the Rules).

2. The main contention of the petitioners was that the enforcement of the order was being ordered in violation of the State of U. P. not only the enforcement of the order by the State Government in 1951 (making it from Rs. 1200/- to Rs. 3000/-) consequently the order of the petitioners was also the actual enforcement of the order made. The case of the petitioners was that even in the absence of such provision was not necessary to be established with substantial evidence, but even broadly and vaguely, no relationship between the fee and the services rendered in the census enumeration could be established and as such the enforcement of the order from Rs. 1200/- to Rs. 3000/- was illegal.

3. Apart from the above point, some other minor points have also been raised which we will deal with later.

4. For removing the controversy, local reference to the relevant statute may be made. In 1955 the State of U. P. passed an Act known as the U. P. Census (Regulation) Act, 1955 (U. P. Act No. 3 of 1955) (hereinafter referred to as the 1955 Act) for regulating censuses by means of enumeration in the State of U. P. Before the 1955 Act, the State of U. P. had framed Census Enumeration Rules, 1951. These Rules were framed in exercise of the powers conferred by Section 5 of the Census Act, 1951 and by the Census Rules enacted in Section 12 of the 1955 Act, they remain in force.

5. Section 3 provides that, now or otherwise provided in the Act, no person shall give an affidavit by means of a census enumeration elsewhere than in a place licensed under the Act or otherwise than in compliance with conditions and restrictions imposed by such license. Section 4 empowers District Magistrate to be the licensing authority. Section 5 has provided for licensing authority that will give a license under the Act unless the conditions mentioned in the provision were satisfied. It is for the reason that the section has been headed as "Licensing of the power of licensing authority". Section 7 provides that where a

license has been granted under Section 17 it could be cancelled or revoked in public interest. One of the grounds for cancellation mentioned in Chapter III of Sub-Section 11 A) read as follows:—

the licensee has irregularly or fraudulently the provisions of this Act or the rules made thereunder and/or conditions or restrictions contained in the license or of any conditions stated under Sub-section 10 of Section 5.

4. There are many other clauses in the subsequent sections. However, the details of the same are not necessary to be stated here in order to do so. Section 1 deals with penalties for contravention of the provisions of the Act. By Sub-section 11 of Section 12 of the Act the Cinematograph Act 1952 is to be a subject in the domain other than the cinematography films for exhibition was repealed in its entirety by the State of L. P. However, as already stated Sub-section 12 of Section 12 provided the Rules made under the Cinematograph Act 1952 before the commencement of the 1993 Act and provided that they would continue to be in force and be deemed to be the Rules made under the Act. The Sub-section 12 was brought about by Section 4 of L. P. Act No. 27 of 1993 with retrospective effect. Section 12 applies across the State Government under Rules for carrying out the purposes of the Act. Although when one of the provisions contained in Section 17 a Chapter III of Sub-section 12 That sub-section 12 permits the State Government to issue Rules with regard to levy of tax for print and reversal in license for plates and cinematograph exhibition. The Cinematograph Rules 1952 contain provisions dealing with exhibition, ventilation, seating arrangement, etc. for persons, for extending applications, prohibition of use of building for purposes other than of a cinema, prohibition of fire, any prohibited signs or writing, book, prohibition on taking light and smoking in projection and reading movie, advertisement, etc. There are provisions which take care of the interest of cinematograph as well as the licensee.

5. Rule 27 provides that in addition to the initial inspection for getting a certificate, every permanent building with electrical installation shall be inspected by the Electrical Inspector. Sub-section 11 of Rule 27 deals with inspection by the Licensing Authority. It provides

the Licensing Authority shall inspect or cause to be inspected any cinema in this by production or such materials as may be made necessary.

An important factor is also required to be mentioned by the licensee, in which, although inspection may be required.

6. If in any case during the currency of license the Licensing Authority finds breach of any of the provisions of the Act and the Rules it can call upon the licensee to rectify the breach within a prescribed period. Rule 27 deals with Section 12 cinematograph license. It lays down the amounts which are payable for the grant or renewal of a license.

7. Capital appearing for the purposes specified in two elements are a contribution under that appears to be considered as a fee. The first is that payment primarily as a fee as in public interest and secondly for some specialities as mentioned. According to the petitioner, it must be based on consideration of cost of services rendered to the individuals. The petitioner stated that the cost of exhibition of information regarding other substances. One of them is Rural Extension Plan or State or People's ARMS. In the case the Supreme Court laid down the tests for determining whether payment was otherwise a fee. The conformity before the Supreme Court at that time arose out of a number of petitions challenging the imposition of market fee in the States of Punjab and Haryana. Mr. Justice, Umrigar laid down the tests which are necessary to be satisfied before paying the fee, of fee. The Hon'ble Judge observed:

The element of good price may not be possible or even necessary. It has satisfied with substantial reasons, but even merely and necessity is even be established by the authorities who charge the fee, that the amount is being spent for something relevant to those on whom falls the burden of the fee. As long as good and substantial purpose of the amount collected is in respect of fees may be in the neighborhood of the duty of the State to deal with reasonable necessity as being spent for rendering services of the kind mentioned above.

8. Apart from the aforesaid discussion

by a local authority referred to several other decisions.

1. *Aggarwal Properties Devt. Soc. v. State of Orissa*, AIR 1974 SC 410. 2. *Basal Pharmaceuticals v. State of Gujarat*, AIR 1974 SC 100. 3. *Major Kampani Ltd. v. State of Orissa*, AIR 1981 SC 194. 4. *Corporation of Calcutta v. Lachmi Chandra A.P. (Pvt.) Ltd.*, AIR 1974 SC 1017. 5. *Nagar Mahapalika, Varanasi v. Durga Das Bhattacharya*, AIR 1968 SC 1117. 6. *Indian Hotel and Motel Industries Ltd. v. State of Bihar*, AIR 1971 SC 180. 7. *State Govt. of Madras v. Hindu Deps. v. South Lanka and Electrical Ltd.*, AIR 1971 SC 134. 8. *State of Maharashtra v. Salomon Army, Maharashtra Turnkey*, AIR 1971 SC 495. 9. *Govt. of Andhra Pradesh v. Hindustan Machine Tools Ltd.*, AIR 1971 SC 507. 10. *Chief Commr. Delhi v. Delhi, Luck and Govt. of M.P. Co. Ltd.*, AIR 1971 SC 1181.

11. Counsel for the petitioners urged that between a tax and a fee there is no generic difference. Both are compulsory exactions of money for public purposes. But whereas a tax is imposed for public purposes, a fee is levied and need not be supported by any consideration or service rendered or given. It is levied usually for services rendered, and it is such that an element of profit goes into the purse of the payer of the fee and the public authority which imposes it. The law does not seem to be uniform as to the levy and the manner of levying.

12. Extracts dealing with the argument and dealing the authorities cited on behalf of the respondents in this case are given in copies of the earlier communications.

13. Counsel also made the argument of Mr. P. Aggarwal that in the impugned uniform and rates Act a fee is levied on the basis of the value of the building and the amount of the building for big houses. The imposition is arbitrary and not by Article 14 of the Constitution. According to him, the rate of fee should have been fixed keeping in view the amount of consideration. We do not find any merit in this submission. One of the characteristics of fee as laid down in the various authorities of the Supreme Court is that it is not uniform and is levied on a basis of the varying abilities

or capabilities of different respondents. In *Southern Pharmaceutical and Chemicals v. State of Kerala*, AIR 1971 SC 1013, the Supreme Court observed:

"It is equally true that normally a fee is levied and is assessed on the basis of the paying capacity of the recipients of the service. But absence of an element will not make it a fee if co-extensiveness is established."

14. In *S. T. Sengupta v. Govt. of India*, AIR 1968 SC 1013, the Supreme Court held that ordinarily a fee is uniform and its absence is a matter of varying ability, but absence of uniformity is not a criterion on which alone it can be said that it is a fee in the nature of tax.

15. We are therefore unable to hold that the impugned by the impugned order of the State Government is not by Article 14 of the Constitution on the ground stated above.

16. One of the learned counsel appearing for the petitioners submitted that Rule 10 of the Censusograph Rules, 1961, by which fee has been imposed under the Act imposed as under the Censusograph Act, 1958, and the 1961 Act authorizes the making of such a rule. We find no merit in this submission.

17. The U.P. Censusograph Rules, 1961, were framed under Section 9 of the Censusograph Act, 1958. By Section 14 of the Censusograph Act, 1958, the following amendments in the Censusograph Act, 1958, were made:

In Clause (a) Sub-section (2) of Section 4 of the Censusograph Act, 1958, after the word "and" following words shall be added namely,

"and the fees to be levied for issuing buildings for censusograph establishments and for inspection of census establishments in such buildings."

18. Rule 10 therefore, as it stood in 1961, can be justified on the basis of the amended amendment. However, it appears to us that since Section 14(2) of the 1958 Act empowers the State Government to make rules for the fees to be levied for grant and renewal of licenses, registration of the establishments and

Rule 79 could be traced to the State Government under the U. S. Cartography (State 195) the present constitution could under Rule 29 of the Rules would be valid for a government in existence from the 1910 Act. Rule 29 was amended in 1975 by Notification No. 26-43/75-2444 dated 2nd July 1975. By this amendment, the limit set was raised to Rs. 1000. It was in the year 1981 that the limit set was raised to Rs. 2000. In view of the amendment by the State Government in that year. Consequently, the present Rule 29 which is the subject matter of challenge is dated was passed in valid because in the provisions of Section 10(1)(a) in its original it was valid passed in 1981.

10. Coming to the question of persons to be considered to be casual workers or others who pay licence fee, the submission was that the employees of service in was previously had done by the Supreme Court, but subjected a change and now in accordance with the lower provisions, the element of *quid pro quo* must a new question arise. For the purpose release was placed on Southern Pharmaceutical and Chemical v. State of Kerala AIR 1981 SC 1813 (supra), Municipal Corp. of Delhi v. Hotel Yash AIR 1971 SC 167, American General Trustee v. State of Andhra Pradesh AIR 1970 SC 1316, Ananthu Ott. Prakash v. State of Punjab AIR 1985 SC 2149 and City Corp. of Calcutta v. T. Sathian AIR 1981 SC 174.

11. The Supreme Court in City Corp. of Calcutta v. T. Sathian (supra) has laid down that though for some time release with the service rendered but the service could be casual or definite. To us it appears that to render a fee to be treated as immediate advantage measurable in terms of money, contained on the paper as to length a requirement for the purpose of applying it. It far would be to service from the concept of fee. It may be that the fee must have relation with the service rendered, but it could be definite. These authorities are, in fact, based on the decision of the Supreme Court given in Southern Pharmaceutical and Chemical v. State of Kerala AIR 1981 SC 1813 (supra) where the Supreme Court through Justice A. P. Sen, J., observed:

It is also increasingly realised that the element of *quid pro quo* must stand as a

strong element in the law. It is needless to state that the element of *quid pro quo* is not necessarily stated in every law. It may stand as an element in the law in the absence of such a law in the Constitutional Law.

12. Coming to the position, apart from the law, which is the element of *quid pro quo* by the Supreme Court and in American General Trustee v. State of Andhra Pradesh AIR 1970 SC 1316 (supra) in which the Court in the Constitutional Bench judgment in Kerala National Pharmaceutical v. State of Kerala AIR 1981 SC 1813 (supra) has laid down that the element of *quid pro quo* must stand as a new question arise. For the purpose release was placed on Southern Pharmaceutical and Chemical v. State of Kerala AIR 1981 SC 1813 (supra) and Ananthu Ott. Prakash v. State of Punjab AIR 1985 SC 2149 (supra) have to be held as binding on the City.

13. We are unable to accept the submission of the petitioner's learned counsel, Kerala National Pharmaceutical v. State of Kerala AIR 1981 SC 1813 (supra) in which the Court in the Supreme Court in subsequent the case, after stating that, the element of *quid pro quo* must stand as a new question arise. For the purpose release was placed on Southern Pharmaceutical and Chemical v. State of Kerala AIR 1981 SC 1813 (supra) and Ananthu Ott. Prakash v. State of Punjab AIR 1985 SC 2149 (supra) have to be held as binding on the City.

14. It is also well settled by numerous courts that the element of *quid pro quo* must stand as a new question arise. For the purpose release was placed on Southern Pharmaceutical and Chemical v. State of Kerala AIR 1981 SC 1813 (supra) and Ananthu Ott. Prakash v. State of Punjab AIR 1985 SC 2149 (supra) have to be held as binding on the City. It is also well settled by numerous courts that the element of *quid pro quo* must stand as a new question arise. For the purpose release was placed on Southern Pharmaceutical and Chemical v. State of Kerala AIR 1981 SC 1813 (supra) and Ananthu Ott. Prakash v. State of Punjab AIR 1985 SC 2149 (supra) have to be held as binding on the City. It is also well settled by numerous courts that the element of *quid pro quo* must stand as a new question arise. For the purpose release was placed on Southern Pharmaceutical and Chemical v. State of Kerala AIR 1981 SC 1813 (supra) and Ananthu Ott. Prakash v. State of Punjab AIR 1985 SC 2149 (supra) have to be held as binding on the City.

15. In Chander Bhatnagar Pvt. Ltd. v. Employees Union Insurance Corp. AIR 1981 SC 1700 (supra) the Supreme Court through Justice A. P. Sen, J., observed:

16. On the contrary, when the benefit of service rendered could be direct or could be indirect as well, the Supreme Court could

ge. *Managed Company of India v. Maharashtra State Paper Mills*, AIR 1983 SC 443 (supra). In this case, the Hon. Justice Bhagwati made the following observations:

For a time, these legal relationships for services, rendered at the administrative level and such relationships as, for example, Administrative, go on to this.

25. Learned counsel for the petitioners had urged that even for some of the provisions of the law made in *Karnal Khatun Parys* case AIR 1980 SC 1036 and urged that same the court judgment was a Constitutional Bench judgment. It was holding on the Supreme Court and, as such, the later decisions deriving from *Karnal Khatun Parys* court were not binding on the Court. This submission does not appear to be in issue drawn at *Srinivasan General Trade v. State of Andhra Pradesh* (AIR 1983 SC 1284) (supra). Hon. Mr. J. S. J. said that:

It would appear that there are certain characteristics to be found in the judgments in *Karnal Khatun Parys* case AIR 1980 SC 1036 (supra) which were really not necessary for the purposes of the decision and go beyond the decision and therefore, they have no binding authority, though they may have merely persuasive value.

26. Much the above was Hon. Mr. C. L. Chagga Reddy J. expressed agreement by drawing *M's. Anandh Das Prakash v. State of Punjab* (AIR 1985 SC 119) (supra). In the opinion of Hon. Mr. J. S. J. the observations made in *Karnal Khatun Parys* case that substantial portion of the amount collected as fee at the neighbourhood of restaurants or these hotels must be spent for rendering services to the extent to the power of the state are clear.

27. In *M's. Anandh Das Prakash v. State of Punjab* (supra), the Supreme Court, after taking note of *H. H. Sankaria Thatha Gensant v. Commr* AIR 1983 SC 1046 (supra) *Wajir Ramput Das v. U. Ltd. v. State of Orissa*, AIR 1984 SC 494 and *H. H. Sankaria v. Commr* *Hinda Belagach and Chembale Endowment Dept*, AIR 1985 SC 119 (supra) agreed with *Srinivasan General Trade v. State of Andhra Pradesh* (AIR 1983 SC 1284) (supra) and made the following observations:

The traditional view, that there must be

direct and proximate for a fee has undergone a sea change in the subsequent centuries. The distinction between state and non-legitimate in the fact that a fee is exacted as part of a common burden which a fee is for payment of a specific benefit or service although the special advantage is necessary to the persons from a regulation is public interest.

28. The Supreme Court in this case also approved *Srinivasan General Trade v. State of Andhra Pradesh* (supra) where it is held that relationship between the fee and the services rendered is not a fee of general character and not of individualized benefit. To the same effect, the Supreme Court has referred to *H. H. Sankaria v. Commr* *Hinda Belagach and Chembale Endowment Dept* (supra). In this case, Chembale, C. J. said:

What has to be seen is whether there is a fee chargeable between the fee charged and the services rendered to the person paying it as fee.

29. In fact, earlier to these recent decisions also, the Supreme Court had found that for a fee to be valid it was not necessary that direct benefit should be conferred to the person. In the *Delhi Club and General Club Co. Ltd. v. Chief Commr of Delhi* AIR 1971 SC 144 the Supreme Court observed:

A fee is the nature of a freedom not mean as fee of that character merely because there is an element of compulsion or compulsion process is a norm it is possible of a fee that a man have direct relation to the services rendered by the authority in which individual who obtains the benefit of service.

30. In *H. H. Sankaria Thatha Gensant v. Commr* AIR 1983 SC 1046 (supra) the Supreme Court had said:

The expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the fee and the expenses incurred for rendering the service.

31. From what we have said above, it follows that the relationship between the services rendered and the payment need not be direct. It could be indirect or causal. The requirement of direct relationship has now



30. The interpretation of the document is found in *Kirkham Part 1*, *State of Maryland* (418 U.S. 103, 1973) respect made by the Supreme Court with two documents submitted above in the law. As stated within the meaning of Article III of the Constitution. The law declared a finding. *William H. Kirkham* that *Kirkham Part 1* submitted and occupies the full with a finding in all respects comprehensive of the relevant documents of the Supreme Court. What has been laid down in *Kirkham Part 1* case has been written down by the Court by the interpretation made by the Supreme Court of that document and to deliver the law declared in subsequent proceedings. The law laid down is that the traditional concept of a law of good person has undergone a transformation and that through the law that have returned to the courts themselves in the advantage conferred such return is done by direct administrative release may be enough. It is unnecessary to conclude that those who pay the first state income taxes should be exempted from the second. No general intent to approximate pay the tax would justify the levy.

31. Some of the payments received also argued that as reported by the App. the State should have been paid before the two House of the State, and as this was not done, the Subscribed upon arrested. The constitution cannot be accepted in view of the evidence made at the common defense. The common defense has made that the amended Subscribed was paid, or by the collection of the two House. Nothing has been done in as it stated in the introduction against the State, in this point. Moreover, placing of a Rule before the two House is clearly discriminatory.

32. Money received by collecting, to Rule 10 of the Rules that as the amount will go in deposit in the State Revenue, the amount charged by way of institution under Rule 10 is not laid. According to the contract for the payments, the money collected must be deposited in a separate account and cannot being done, the same is a law and not law. In *Mississippi College v. State*, *Kirkham* will find it with respect the Supreme Court find.

The money collected does not justify a

separate find but goes into the consolidated fund does not also necessarily make what a law.

33. The above document depicts of the argument of the learned counsel.

34. By taking in through the various provisions of the Rules, learned argued that the benefits of any and being considered in the constitution, and in each above finally would deliver the law from the advantage of law, but through the attached in the reference. The Supreme Court rejected a similar argument in the *Cay, Corp. of Calicut v. J. Sullivan* (418 U.S. 103) *Waggoner* above observed.

Thus others besides those paying, the law are also benefited does not deliver them the character of the law.

35. Two member affidavits have been filed by the State and U.P. One member affidavit was by the Finance Department that *Kirkham* cited U.P. Constitution. In this affidavit was alleged that various were being collected in the constitution as law of law which was being realized from them as such. By referring to Section 7, it was alleged that the Enforcement Tax Department holds that the witnesses which have in the personal law along with the creation of income, a Chart attached as C.R.1 was filed. This Chart has been classified by filing a supplementary common affidavit in behalf of the State. From the Chart given along with the supplementary common affidavit it appears that the witness except the tax of income for at the last of the 1980 period, even in the year 1981 along the 20th law, whereas the total expenditure through the Enforcement Tax Department was for 40.75 law.

36. In *Subscribed* *Prasad* learned counsel for the petitioners in none of these cases argued that whereas the Chart gives the expenditure to be incurred on the Government Tax Department, it does not give the figure of money which is received in constitution law, and therefore, the Chart is useless and does not help the Court in deciding the constitution. He also argued as was submitted by other learned as well that the maintenance of the Enforcement Tax Department by the Government was for the purpose of collection, expenditure of it and







## 1984 A.L.L. 1.1.195

B. S. ALJARIH

*Also Appointed Secretary, Transportation & Traffic Transport Appellate Tribunal of Lebanon and another Appointments*

1. and Also, West Paper No. 240 of 1975 (D. 25.1.1975)

**Motor Vehicles Tax (No. 10079, No. 58, 68)3**  
— **Removal of goods** — **Power of transport authority** — **Audacity** is not competent to impose conditions on permit holder to pay certain amount while receiving permit by referring to 5.603b) (Para.4)

**Case Refused Chronological Para**

1984(1) West P. No. 174 of 1976 (D. 7.2.1982) (AD) Beirut Motor Regional Transport Authority. All denied. — 4

L. P. Naqurah for Plaintiff. Amal...  
Gassini for Defendant.

**ORDER** — The motor permit holder had signed the order of the S.T.A.T. in 1980 whereby the State Transport Appellate Tribunal dismissed the appeal of the petitioner.

2. The petitioner applied for renewal of his permit which was refused on 5.6.81. The order was 1 day up of the issuing of the R.T.A. 5.6.81 on 25.10.2.81 and 1.1.82. The State Transport Appellate Tribunal found that the permit must appear that date and was found and the order signed which the appeal has been produced was made on 1.1.1982.

3. The appeal was filed on 25.10.81 by the petitioner. The State Transport Appellate Tribunal found that the appeal was barred by time as it was presented more than 30 days after the order of the R.T.A. The licensee for filing the appeal has been suspended by the Tribunal on 1.1.1982 as it is not from the date when the order was made. For L. P. Naqurah is not a counsel for the petitioner unless that in this case the order was made on 1.1.1982. The petitioner applied for the renewal of his permit on 7.1.82 and the renewed copy was delivered by the petitioner on 7.4.82 and 10.1.82. A. 1984-85/12.88

the appeal was presented on 25.10.81 after 30 days of the Motor Vehicle Tax (No. 10079) being in appeal or more than the date of the receipt of the order. In this case, the order was administratively cancelled on 7.1.82 and the appeal was presented on 25.10.81 as within a period of 28 days. I found that the permit was withdrawn under suspension and the order taken by the appeal on 1.1.1982 applying for a copy the appeal would be without time. The Tribunal is not aware of the date of the appeal produced by the petitioner was found by me.

4. In this case, the petitioner's permit is expired and he applied for renewal. The R.T.A. granted renewal subject to the petitioner's depositing a sum of 10,000.000 in fees. The Tribunal was of the view that under 5.603b) and under 5.603d) of the Motor Vehicle Tax (No. 10079) R.T.A. is not competent to impose such a condition. But if the Tribunal found that the petitioner has not deposited an amount to a designated bank for the R.T.A. P. Naqurah on 25.10.81 on 12.1.82 (1984) Beirut Motor Regional Transport Authority. All denied. Report. All denied. The order of 7.2.82. In this case the R.T.A. is not competent to refuse the petitioner while granting renewal of a permit for less than 30 days. It is not a condition regarding the permit of the petitioner for one month in the form of less than 30 days of the expiration of the vehicle. This is not a condition and that a permit can be suspended under 5.603b) of the R.T.A. under 5.603d) of the R.T.A. is not found on the case before the Tribunal. The Tribunal found that the permit was not then suspended under 5.603d) of the R.T.A. The suspension was made on 1.1.1982 under 5.603d) of the R.T.A. 5.603d) of the R.T.A. is not suspended on the grounds of the Tribunal's finding. This is not a condition, permit on that grounds of suspension is not made under 5.603d) of the R.T.A. during the suspension of a valid permit and on one of the grounds mentioned in the R.T.A. A permit which has expired by operation and which is not valid for more than 30 days is not suspended.

5. In the present case the order of the R.T.A. has been made under 5.603d) of the R.T.A. The Tribunal is not aware of the R.T.A. is not found that suspension of the permit of the petitioner applied to pay a certain sum of money. In this case the R.T.A. should be aware of the

plaint on the condition that the petitioner pay a sum of Rs. 10,000\*. This the petitioner was not competent to do while retaining a post.

4. In the result the two petitions are made order after as follows. The impugned orders 24.10.77 of the State Transport Appellate Tribunal (amended) as the writ petition and the impugned order of the R.F.A. dt 27.10.78 and 1.11.78 as far as they required the petitioner to deposit/ pay a sum of Rs. 10,000\* are quashed. The petition is rejected in its entirety.

5. I may add that the writ petition came up for admission on 10.1.83 on which date the Standing Council was given time up to 28.4.83 to file a counter affidavit and it is made clear that the case would be disposed of on that date. The Standing Council states that the counter affidavit is being prepared. However, as there is no input/output as to facts and legal questions of law arise the writ petition has been decided at the time of admission.

*Prayers allowed.*

#### 1986 ALL L.J 397

O P SAGDHA AND S L TADAY JJ

Chandrabh Sekh. Petitioner v. Deputy Director of Education, V. Region, Varanasi and others. Original Petition.

Civil Writs, Writ Petn. No. 4977 of 1984 O/ 291/ 1985.

**UP Intermediate Education Act (2nd 1921), s. 26(2) — Education in Dy. Director of Education — Exclusion of two other management committees in a condition precedent —** When fact that District Inspector of Schools made a reference to Dy. Director would not render any jurisdiction on the latter. (Para 11)

**Cases Referred. Chronological Form.** 1985 ALL LJ 1214. 1985 UP LJC 478. 1. 10.

A. N. Singh and R. N. Singh for Petitioner Standing Council for Respondents.

DC SEC 1987/14/1986/1986.

O P SAGDHA, J. — By the petition under Art. 226 of the Constitution, the petitioner has prayed for a writ of certiorari quashing the impugned orders dated 24.10.1977 (interim) 10 and 26.10.1978 (amended) VI and also impugned No. 1 to quash the conditions under art. 26(2) of the Intermediate Education Act.

2. Dispute related to the management of Ankur Education Society's Intermediate Public School, Ballia. On 14.10.1979, Sri Govind Shastri Rao was elected President, Sri Vishwanath Rao was elected Manager and Sri Chandrabh Sekh. was elected Deputy Manager. On 10.11.1980, a bench show an order to show himself as which Sri Baldev Prasad Rao was elected President and Sri Hemanta Varma Rao (R. M.) was elected Manager. The District Inspector of Schools, Ballia (D. I.) recognised the management committee of which Sri Hemanta Varma Rao was the Manager. Three writ petitions were filed. Writ petition No. 4974 of 1984 and 1985 of 1985 were filed by respondents. The three writ petitions were decided by a common judgment dt 17.11.85 vide Announcements Nos. 1984 of 1987, regarding order of District Inspector of Schools recognising the Management Committee also Indian 2005. May 1980 was dissolved. On 1.12.83, the District Inspector of Schools again recognised the Management Committee vide Announcements 1188 dt 24.11.83 and 10 dt 29.11.83 and the representations made by the petitioner to Deputy Director of Education and District Inspector of Schools respectively. On 12.12.83, the District Inspector of Schools related the dispute to the Deputy Director of Education vide Announcements IV. He passed an order of non-impugnment and receipt dt under dt 1.12.83 on 20.1.84, the Deputy Director of Education refused to decide the dispute vide Announcements V on the ground that the High Court had already done so in the judgment dt 17.11.85. On 24.1.86, the District Inspector of Schools again recognised the Management Committee vide Announcements VI. Hence the petition.

3. After the exchange of affidavits, we heard Sri R. N. Singh, Sri A. N. Tripathi and the learned Standing Council and were deciding the petition on merits at the additional stage.







3. It has been held that a contract for the sale, under section 2(4)(a) of the Act 1925, of the defendant's (as plaintiff's) interest in property, which purports to convey only that the defendant agrees to follow the rest of the building with to be completed. It can be said that the nature of the conveyance work done will mean that a limited construction cannot be made in practical and whole, structure has to go together. Though there is no impossibility in having a much larger building as present law concerning a building, but by its self surely isolates the structure and that will not pass due to same strength which would have been shown if the whole project is taken up together. The completed building is greatly affected by suggested foundation, wall and roof construction of the entire building is not constructed at one point of time but it takes up in different stages. If the parties contract their portion of conveyance separately and if the rest of the building is completed by the landowner at some other stage then the construction of the building will not be as strong as it would have been if the entire construction had been taken up together. The legislature would not have contemplated anything against the interest of the landowner by making a provision that the stated will be permitted even to construct portions of the structure leaving the rest to be completed by the owner of the building. This view finds support by another reason also. Suppose a contract was a house of the second floor and if it is accepted that under section 262 a contract is restricted to construction of portion of the building then the question will arise how such a right intended to have been considered on the ground will be exercised. Unless the ground floor or first floor are completed by the landowner the owner will not be able to rebuild his ground floor and the right so intended to have been considered on the ground could not be exercised for section 262 has to be construed in such a manner as to not render the rights of the parties vulnerable or ineffective or to the detriment of the joint venture partnership in the landowner. When Section 262 is harmoniously construed it will follow that the contract will have a right so automatically if the building under contract contained a separate unit or part which could be constructed without destroyed by the main structure except for section 262. In that circumstance

it may may reconstruct the same unit without depending on the landowner. The operation has some number also before that Court and that is in the case of *Haji Mubina Hussain v. Jai Ashi* District Judge Jaipur 1975 44 Bom Cr 491 1975 All LJ 1201. The Court interpreted section 262 after repudiating the material portion thereof that if the whole of the building which has been let out to a tenant is destroyed by any of the parts or members or submembers of it section 26 of the contract would certainly be a right to construct the building but not a portion of the building, also as to let out, the present contract here, it will be repudiated. I wholly agree with the view taken in the said decision and hold that the view taken in the court below of section 262 is wholly acceptable as law. The learned counsel for the respondent relied on the case of *Mohammed Isah v. W. A. Durrani and Sonam* Judge, Allahabad AIR 1977 VI 838. Relying on this he submits that under section 262 if the building does not exist it will be that reflects a portion of the unit or part. The authority which is cited as does not support his contention. The Supreme Court interpreted the word 'building' as occurring in Explanation IV to section 262 of the Act 1925. The Explanation IV read a prescription regarding the bona fide need of the landowner and that was in the following words:—

IV. the law that the building under contract is a part of a building, the remaining part situated in the possession of the landowner for residential purposes, shall be construed, to prove that the building is bona fide required by the landowner.

Interpreting Explanation IV, the Supreme Court observed in para 7 on page 884 as follows:—

To determine the applicability of the Explanation the question to be asked would be whether the construction under contract and the reconstruction in the possession of the landowner together constitute one unit of construction? The object of the legislature clearly was that where there is a right of reconstruction of which a part has been let out to a tenant, the landowner who is in possession of the remaining part should be entitled to recover possession of the part let out to the tenant. It could never have been





the state's such resolution of state. Likewise, assuming that appellant Land's is to be allowed for various questions that the number of various being in use building would be considered. (Pena 118)

**(C) Urban Land/Calling and Regulation)**  
**Art 20 of 1976, § 36 (1) — Urban Land**  
**under — Building effect of**

In possession of power to the Urban Land/Calling and Regulation. These have been issued in order to regulate uniformly a implementation of the provisions of the Art. A Urban Land 1976 advantages of these policies through the State Gov. may not in cases various questions be taken on the ground that the policies are contrary to the provisions of the Art. 11 for policies in favour of the state's and not to open to the without to ignore the same. AIR 1972 SC 524. Ref on. (Pena 12)

**Case Reported Chronological Form**  
 1981 AIR LJ 126; 1983 4 SCC 110; AIR 1985 SC 1081 4  
 1979 AL LJ 1001 4 9  
 AIR 1972 SC 524; 82 HLR 915; 1979 Tax LR 346. 15

Chief Building Council for Portuaria  
 Atah N. Tawar and Egan Quares for Respondents

**L. N. GUYAL, J. —** This was petition under writ of prohibition for declaration of surplus land under the Urban Land/Calling and Regulation Act 1976.

**J. —** The respondent Mrs. Rajesh Marley holds a Bangalore No 31 Building License. On a notice being issued to her under the said Act she filed an objection in which a plea was taken that she was merely a licensee and not an owner and as such there was no question of any surplus land being sold by her. On facts also was presented that the area of the land comprised in the notice was 102 sq mtrs and further that there were three dwelling units and not one on the land. Ultimately the competent authority found that the correct area was 8250 sq. meters out of which she was entitled to the benefit of 10% and sold by owner and declared 1976 and sold by her as surplus vacant land. Against this declaration the respondent filed an appeal.

Para AL LJ 17 (13)

Before the learned District Judge. In the course of course of appeal which is Annexure No C 1 to the counter affidavit again the same legal plea was taken and it was urged that nothing should have been observed at surplus land.

**J. —** When the appeal came up for hearing, before the learned District Judge the only point pressed was that the respondent had merely allowed the benefit of only two sq mtrs question a license actually there were 10 sq mtrs question and he had then the respondent was entitled for building, instead of additional apartment land. This plea was not specifically taken in the ground of appeal but was nevertheless maintained by the learned District Judge who thereupon issued a commission to an Advocate. The Advocate submitted a report on 4-1-1982 in which he said that there were four persons question. Against this report the respondent filed an affidavit denying the Advocate's commission was not again and that fact for which the actually there were seven persons question. This was accepted by the learned District Judge and accordingly the appeal was allowed and it was held that there was no surplus land at all. Aggravated by the decision the State, had filed the case person.

**J. —** The next point came up for hearing, before a learned single judge (Para AL LJ 5 Annex 2). The question on which learned single judge was addressed was whether appellant Land is to be specially allowed for various questions. On behalf of the respondent (which was placed on State of U/P v. L. J. Sharma 1978 AIR LJ 1134-7 124 in which it was observed inter alia as follows:—

Even if the dwelling unit is in the result of a contract question or otherwise, land appearance in a shall have to be sold again before the land appellant to the state building.

On behalf of the State a new question that the said decision in Johnson's case has been reversed by this like the Supreme Court in State of U/P v. L. J. Sharma 1980 4 SCC 115 (1981 AL LJ 126). The learned single judge was of the opinion that the question whether declaration of the Division Bench of the Court in Johnson's case stands completely











38) was the date shown on the notice for appearance for the respondent No. 4. On the last day of its appearance No. 4 appeared and put his signature on the notice dated and on the 17th day of the month about 20:30 hrs. was given as the next date for hearing. The fact is clear from the observations made in the engaged order that, filed as Amended No. 1, the person giving it of the petition that on 20-3-75 the reference could not be taken up for hearing. However, as was already decided and the reference was accepted by an order dated 23-4-75 in the respondent's application respondent No. 4 alleged that he was not served on 17-7-75. He has made his signature on 12-7-75 on the court order under seal bona fide in writing and he is to prove otherwise that the other proceedings will be stayed. The Deputy Director of Compensation did not record a finding as to how on 17-7-75 the respondent No. 4 has put his signature on the order sheet and how the next date 20-3-75 is indicated as to be the date fixed for hearing of the reference. It is proved that the respondent has put his signature in duplicate responses on 12-7-75 on the order sheet, he came to know about the date fixed in the reference and there was no justification to require the reference. Section 41 of the Act makes Chapter IX and 3, of U.P. Land Revenue Act, 1904 applicable, in certain matters in appeal such matters as to (Kachhwa I), then in principle the Deputy Director of Compensation has not taken into account that proviso is that no Order 5 Rule 15 C.P.C. by the Allahabad High Court or a later with the 2nd proviso to Rule 13 of the Order 5 issued by C.P.C. Amendment Act No. 104 of 1976) even though in terms the provisions of C.P.C. would not apply in a consolidation proceedings. It was further urged that orders according to finding about good conduct sufficient cause the order dated 2-4-75 cannot be set aside as void or rescinded of the U.P. Land Revenue Act, 1904.

6. General comment 5. the respondent alleged further that urged that the respondent is also not particularly correct and under some bona fide mistake on 17-7-75 the signature was made by respondent No. 1 that he was made to understand that further proceedings would be stayed as shown in undated appeal and he was persuaded to appear on 18-7-75 when the reference was taken up and stay, etc.

7. Finally, heard the learned counsel for the parties who last point that require consideration is as to whether the respondent application filed in the court was in compliance would have been allowed and whether there was any good cause for non appearance of the respondent respondent on the date fixed for his appearance as required by Section 20 of the U.P. Land Revenue Act, which has been made applicable by Section 3 of the Act.

8. Unless it was proved a fact the there was any good cause the order passed by the Deputy Director of Compensation dated 1-8-75 cannot be recalled nor the respondent application can be allowed. (500-108713 ALJ 18 578 (AIR 1975 SC 108 10 P. State Minister Baidya Mathanand Dasal 1975).

9. Further the contention in Order 5 Rule 12 C.P.C. by the Allahabad High Court has been considered and he had amendment has now been incorporated in proviso to Order 5 Rule 12 by 1976 amendment. Hence just on the ground of irregularity in the service of summons or notice that would have been sent a respondent No. 4 the respondent is not entitled to set aside unless it was proved that he was prevented by some sufficient cause from appearing and he did not (Even though the provisions of Order 5 Rule 12 C.P.C. may not be made applicable in terms to the consolidation proceedings but the spirit of these provisions has been made applicable).

10. The Deputy Director of Compensation has made observation in his order dated 12-7-75 that, Respondent No. 4 has made his signature on the order sheet and the other parties to the reference also made their signatures and 20-3-75 was the next date fixed. It was thereafter alleged that the file was also taken up on 20-7-75 but ultimately it was decided on 14-7-75. It was respondent No. 4 has put his signature on the order sheet dated 12-7-75, it was for him to appear on the next date fixed under provision i.e. 20-3-75. On 20-3-75 he could have appeared before or sent a representative to look after the case. In the respondent application it appears that respondent No. 4 alleged that on 14-7-75 on 20-3-75 he was not off work and had gone to Vancouver, Canada, with some relatives (discussing that the fact is in the event also it was the responsibility of respondent



the 4 on 10, made arrangements for appearance on the date fixed on 3-6-75. The Deputy Director of Consolidation has not considered the submission application with reference to the appearance. It happened the 4 on 12-7-75 or so or what was the compelling circumstances in a court of which respondent No. 4 could not appear on the date fixed on 3-6-75. Hence, the party appears in the court when respondent No. 4 took about the case on 1-8-75 although it was 17 days late as protected by some sufficient cause being appearing on the subsequent date. It cannot be taken as a matter of right that he can appear on any date, depending on his convenience. In the instant case by the impugned order the right of the petitioner who is a woman, is being allowed. In case there would have been some dispute about the short of time longer the matter then there would have been some qualification for the claim of respondent No. 4. But in the instant case the petitioner right is protected and it was never in dispute. As on the date fixed on 10-7-75 respondent No. 4 appeared then on subsequent dates about was the duty to appear on the said date, respondent was to look after the case.

11. In view of the facts stated above, it is clear that there was no compelling explanation offered by respondent No. 4 for his late appearance on 3-6-75, the date on which evidence was accepted by the Deputy Director of Consolidation. The Deputy Director of Consolidation was accordingly not justified in allowing the submission application by the impugned order dt. 28-5-75. The impugned order accordingly cannot be sustained.

12. In view of what has been stated above, there was no justification at all in the order dated 3-4-75 passed by the Deputy Director of Consolidation.

13. The Writ Petition accordingly succeeds and is allowed. The order dated 28-5-75 passed by the Dy. Director of Consolidation is Annulled. The illegitimate liberty granted under this modification of the Law 1 in the first writ petition is rescinded.

*Petitioner allowed.*

1986 ALL L.J. 1020

**S. M. SHAH AND B. L. YADAV, JJ.**

**Sham, Light v. State of U.P. and others, By Quicker etc.**

Civil Misc. Writ Petition (P.W. No. 400) of 1985. D. dt. 27-5-1985.

**National Security Act (45 of 1948, Sec. 3(1) (b)) — Proceedings before Advisory Board — Hearing before Advisory Board is mandatory — Order not issued through the Board — Proceedings before Advisory Board got initiated — Decision in pursuance of report of Advisory Board, illegal.**

A High Court order, specific, pursuant for hearing, in the decision by the Advisory Board and the Advisory Board was to submit its report only after the hearing the decision. (Para 12)

Where, the detention is reported for scrutiny of the Board to the Board on the 10th, as he was not in a position to represent the 1st being severely beaten by police, it was mandatory on the part of the Advisory Board to take certain steps to preserve the memory of the case, and hence, before the 1st, the decision through the Board initiated the, which proceedings before the Advisory Board accordingly the decision of the decision in pursuance of the report of the Advisory Board became erroneous. Case 1 is reversed. (Para 12) (7)

**Case Related Chronological Para**

ALL 1981 SC 505 1981 L & L 545

511, 54, 56

ALL 1982 SC 718 1982 Cr L J 140

5, 14, 15, 16

1986(1) 281 (15) 1986(2) 481 (15) 1986(2)

WLR 1401 Para V Grounds of Writ Application (at 15)

1972(2) 287 (15) 15 77 L & L 150 Revised A. Sharma 11

15 Nagar for Paragraph 12 (1) A. L. S. Raychaudhary

**YADAV, B. —** The present Habeas Corpus petition is dismissed along with the decision order dated 21-1-85 passed by the  
S. M. SHAH AND B. L. YADAV, JJ.

Department, about 10 people under S. 263 of the Penal Code Section 40, 1952 (the above the Act).

2. The facts of the case are as a very serious corruption and they are those. The petitioner was earlier detained in the case 1952 under S. 38 of the Act and he filed a Habeas Corpus petition in the Court which was allowed on 26.11.52. Again the petitioner was detained by order dated 22.1.53 under S. 263 of the Act (transferred to the petitioner) and the grounds of detention were given in Annexure 2 to the petition. The grounds of detention as translated in English are set out below:—

(a) You formed a unit of Rs. 10,000/- from the loot of a petrol pump and a change under S. 263 IPC was formed.

(b) On 2nd 12 at about 1.45 P.M. at Bangalore Police P. S. Kottahalli being armed with gun and bombs harassed the public, and attacked the bus No. U.T.N. 5529 and charges framed were under Ss. 37/427 IPC and the case is pending.

On 14.12 at about 4.00 P.M. at Mahabaleshwar Police P. S. Kottahalli you along with your friends followed a motor bus and looted it and a criminal case was pending against you.

(c) On 3-4-57 at about 11.45 A.M. at Hariel Ka Road you along with your friend named with rifle and country made pistol etc. attacked Uma Shankar and made kidnapping from him, where Arjun Dalvi, and a criminal case under Ss. 147/452/148/149/304/306 IPC was pending.

1-1 On 27-4-54 at about 9.00 A.M. at Madhukhadi Station, Pune, you along with your friend named Vinod Kumar Singh and others a bomb and opened fire from your rifle and a case under Section 307 IPC was pending against you.

2-1 Similarly on 27.12.54 at about 11 A.M. at Madhukhadi Station, on the use of Police military division, you along with your friends attached with the bundle of bullet papers from the Printing Office and also putting the seal on the said bundle entered the bullet papers inside the bullet box and a case under Section 395 was pending.

Just On 27.12.54 on the second round of Parliamentary election in village Bhawdga

Poling, Kottahalli No. 144 at about 1.45 P.M. you along with your friends opened with pistol and bomb, for the Printing Office and by force attached with the bullet papers and also putting them on them entered the same in the bullet box and a criminal case under Section 395/397 was pending.

Just On 27.12.54 at 11.45 P.M. of Parliamentary election, you along with your friends, armed with pistol, entered a printing for the bullet papers at a number of polling booths and from different polling stations attached with bullet papers and also putting and entered the same into the bullet box and being returned by the police staff. Case filed before you opened along with your friends and a case under Section 395/397 IPC was pending.

1-1 It is also clear from a report of the Superintendent of Police dated 22.1.53 that you had moved an application for bail and there were no proper reasons for the bail application being allowed, hence keeping in view your criminal antecedents and as you were acting in a manner prejudicial to the maintenance of public order, hence a request was to keep you in custody, and the order of detention was imposed.

3. The document order was served on the petitioner. The grounds of detention were disclosed to him and in view of S. 21 of the Act he was also directed to make representation against the order of detention to the State Government and his case would be referred to the Advisory Board under S. 18 of the Act and in case he made petition to the Board in view of S. 18(1) of the Act he should write clearly in his representation and that he should make representation through the Superintendent to the State Government. The petitioner made a representation to the Advisory Board on 5-1-55 through the Superintendent, but Bangalore. Again he made another application (Annexure 32 to the petition) making a prayer that he has been severely harassed by police and he is not in a proper financial condition and he will afford that he would not be able to represent his case personally in a proper way. Consequently, it was that his request for Shyam Narayan Lal may be permitted to represent the case before the Advisory Board.







## 1986 ALL. L. J. 129

S. K. MEHTA (J.)

**Chitral Lal and another Petitioner v. The Yashraj Additional District Judge, Kanpur and others Respondents.**

**Dist. Mng. Writ Petn. No. 14250 of 1981**  
[1981 129 All.]

(A) U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (U of 1975), S. 21(b)(i) and Section 3 — Release of accommodation — Application for — Landlord rather than sitting part of building for business purposes — He has to make availability of application.

The third provision of S. 21(1) only provides that an application for release of accommodation is to be filed with an officer of S. 21(1) would not be entertained in case, at any residential building for occupation for business purposes. The said provision did not provide, as landlord, from using his own residential accommodation for business purposes as such does before. (Para 11)

Where the application for release of accommodation is the reality of release via for business use of residence only demand based on ground that the landlord had earlier permitted a portion of residential building (the shop establishment) for manufacturing business was an absolute circumstance. The authority might have been right in its approach in case release of the accommodation as occupation of the premises for their residential purposes was sought for using it for manufacturing business or other business. (Para 12)

(B) U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (U of 1975), S. 21(1) — Application for release — Ground — Impending marriage of son was the valid ground.

Necessity for additional accommodation on the ground that it was the landlord was likely to be met by set up a partition in the, normal course, the claim cannot be retained for he has included in definitely a circumstance which can be worked for letting release of accommodation. (Para 13)

CA. 11-12-1981, 129 ALL. 129

(C) U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (U of 1975), S. 21(b)(i) — Release of accommodation — Son of owner as occupant of landlord — Release of accommodation. (Para 14)

**Costs Refused. Chronological Form**  
1981 ALJ 129 (1981) 129, 130, 131  
1981 ALJ 129 (1981) 129, 130, 131

**Attal Khas, for Petitioner, K. N. Datta for Standing Counsel for Respondent.**

**ORDER.** — On Chitral Lal and his wife, Mrs. Hira Devi who are petitioners in this writ petition under Art. 226 of the Constitution of India, and against the respondent, No. 14250 of 1981, Chairman/Cmg. Kanpur. Their petitioners, before on April 15, 1981, some portion of the ground floor and some on the first floor of the building is in occupation of business. Yashraj Narain, Baidal and Gauda Ram are those, such tenants. They are carrying on the business in their tenancy on a monthly rent of Rs. 14/- each.

1. According to the petitioners, their family consists of 18 members. Most of their children are of school going age. One son, Chitral Lal is at nearly 20 years of age as the year 1975. Dependent for his marriage, that is, on at that time.

2. Finding that the accommodation in their possession was grossly insufficient for their requirements, the two petitioners made an application under S. 21 of U.P. Act 1975 of 1975 for release of the accommodation in possession of Yashraj, Baidal and Gauda Ram. The application, which was dated July 1975, mentioned the circumstances in which the two petitioners were desiring the release of the accommodation. Amongst other things, it was stated that the respondent, the respondent, Chitral Lal and his family was dependent for them to have a dining room and a dining room, apart from the living room and necessary kitchen etc. It was also stated that Chitral Lal was likely to get married and would be needing accommodation for himself. The application mentioned that most of the rooms were of the size of 12 ft. x 12 ft. and some of them would have to be converted into bigger rooms to suit the requirements of the petitioners.

3. The three tenants consented the petitioner



language, given what it was he saying in reading prior to an announcement. After all, the suitability of additional announcements, especially on issues of an impending marriage is to be thought of and cannot, for example, well be advanced the more so at the marriage. The case of the petitioner, based on the likely strength of evidence that would not be thrown out on the ground that a witness is unsure a fact could not be, and is, a possibility. The possible that one is a high 10% is taking a rather reasonable to have, should be taken into consideration has been accepted by the Court since 1991. A. Morgan v. The District Judge, [1991] 1 F.R.R. 244.

■ The appellate authority has while dismantling the specimens of human hair used in the trial, found a few more hairs.

Secondly, I find that there are only two adult members in the family of the hundred and the others are young and underdeveloped children. He has parents or grown-ups who learn things alongside him, so he can learn and has got a chance to be guided. There is no education in any way, either. I said he is inadequate emotionally, socially, physically, mentally, etc.

11. The United Khmeres rightly urged that holding the accommodation at the disposal of the landlords or the villages on the grounds of availability of extra rooms at the low rate was improper in law in the instant case since the nature of the rooms was very much peculiar to the village life. The authorities proceeded to entertain suits to have considered the need for additional accommodation in the light of the shortage of the rooms, which were available to the landlords. The substance of suit founded for consideration only of the number of rooms irrespective of their use was no consideration of the problem of accommodation, with law which required that the accommodation at the disposal of the landlords should be fixed to the villages in large number having regard to the actual space available to them and its sufficiency. Where as in the instant case the rooms are used in form of very small independent accommodation, need to the extent of the landlords having regard to their use and way of living, is essential for making the additional accommodation needs to be met in these, not consideration

with the natural frequency, causing the large spread of the data here. That the model is a reasonable approximation cannot be denied (see Rayleigh's Characteristic  $\omega^2 = 10.7$ ,  $P = 90$ , Figure 5).

12. In case of the above I declare, if an income tax return is required, that I am the sole owner, beneficiary and holder of the property, and request it to be considered the same as a donation, with no

33. Being made after a previous appeal, the order dated August 11, 1995 passed by the learned Additional District Judge, Bangor in Writ Appeal No. 23 of 1995 is superseded by the writ petition is quashed. The appeal shall be restored to its original number and dated filed in accordance with law, also set on the record.

[6] "Tony, however, has appeared on British and Irish newspapers at the moment. I have also written about his recent visit to us." [7]

Age Group	Total (%)	Male (%)	Female (%)	Unknown (%)
18-24	15	10	20	5
25-34	25	15	35	10
35-44	35	25	45	15
45-54	45	35	55	25
55-64	55	45	65	35
65+	65	55	75	45

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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[illegible]

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**Editor: Kees and others: Appellants: The State of Karnataka**

Continued Approval No. 103 of 1977 D. 20-1  
198-3

Final Costs 142 of 142b, In 200: 100 -  
 - Member - Greater impact observed in cases of  
 - death - Injury to water-scarce and exposed  
 - not explained by presence of - Evidence of  
 - presence also in conflict with medical  
 - evidence - Correction of record was  
 - effect

Though the pronounced withers are tight, narrowed openings since they are there, they become open by itself and only. These openings have to be sustained with pressure and cannot in order to place influence on their anatomy, and the person on their person do not realize their presence from the place of the occurrence, but more important their person provide no pressure, that is, not telling they make as their absence made in conflict with the world of existence.

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26





carrying weapons had run into the House of Baun Kain appellants. The occurrence was witnessed by Raghunath Singh, Sohrana Singh, Bansi Singh, Mahendra Pal Singh and others.

1. After the occurrence, Ramesh Chandra P.W. 1 prepared a report of the occurrence and took it to the police station Balliana being that instant away from the village of occurrence and made over his report to the Head Constable at 9.10 A.M. This being the instant preparation of his report on the basis of the witness report handed over by Ramesh Chandra P.W. 1 and also prepared a handwritten diary of the Police Station under Section 302 IPC against the appellants and Bhatara Das, Loknath Singh P.W. 12, the Indian Officer of Police. It also Balliana was present at the police station when the report is. Kain 1 was lodged by complainant Ramesh Chandra P.W. 1 at the Police Station. He took up the investigation, took a case and recorded the complaint of Ramesh Chandra at the Police station. The report was sent to Balliana depository where they were mutually exchanged. Smt. Shyam Kain was referred to District Hospital, Bhatara from Balliana depository and there she succumbed to her injuries at 5.30 A.M. on 31.12.1974. The Investigating Officer recorded the statement of Mohan Lal and Sri Kahan P.W. 7 at the hospital at Balliana. However, Smt. Shyam Kain was not recovered at that time and therefore her statement could not be recorded by the Investigating Officer. The Investigating Officer was in the scene of occurrence from Balliana depository and there he arrested all the three appellants along with Bhatara Das from the house of Bhatara Das appellants. Loknath Singh also had seized the accused gang of Bhatara from the room of his house prepared the recovery memo Ex. Ka 11. He also interrogated Raghunath Singh P.W. 8, Mahendra Singh and others. He found two empty cartridges slugs and shrapnel on the spot and seized them accordingly and prepared the recovery memo Ex. Ka 16. He also found bloodstains on the spot and collected blood stained and contaminated cloth from the site of occurrence. The Investigating Officer also made a report by sending the gun of Bhatara and empty cartridges found in the place of occurrence to the Balliana Report for examination and report. He was transferred on 20.1.1975 (175) towards the investigation of

the case was taken up by S. P. Mehta, Station Officer of police station Balliana on 20.1.75. Mohan Lal P.W. 7 surrendered the case which occurred 302 IPC from 302 IPC on 1.1.75 on receiving the instant report of the death of Smt. Mahendra from P. 1. Kain 13 there at.

2. Doctor K. E. Yadav, P.W. 3 Medical Officer, police station Balliana, examined the injuries of Mohan Lal at 10.45 P.M. and he found that following injuries on his person.

1. Lacerated wound 1 1/2" X 2/10" X 1/10" on left eye brow.

2. Swelling over eyebrow around the left eye 1 1/2" X 1" X 1/2" around the eye.

3. According to the Doctor the injuries were simple and were inflicted by means of blunt weapons and appeared to be quite fresh at the time of the medical examination.

4. On the same day at 1 P.M. he also examined Sri Kahan P.W. 7 and he found the following injuries on his person.

1. Lacerated wound 1 1/2" X 2/10" X 1/10" on left side of the scalp 2 1/2" above the left ear.

2. Swelling around the injury No. 1 2" X 1 1/2".

5. According to the opinion of the Doctor, the injuries were simple and were caused by some blunt weapons and were quite fresh at the time of the examination.

6. Doctor Yadav also examined the injuries of Ramesh Chandra P.W. 1 the same day at 1.12 P.M. and he found the following injuries on his person.

1. Injury wound 1 1/2" X 1/10" X 1/10" on back on right side of the scalp 1" above the right ear.

2. Swelling over swelling 2" X 2" on right temporal spot.

3. Swelling around the right knee joint.

7. According to him all the injuries were simple and were caused by blunt weapons except injury No. 2 which was caused by sharp weapon.

8. Doctor was about 1 1/2 hours. He also advised X-ray in injury No. 1.

9. Doctor M. C. Bajaj P.W. 6 Medical Officer, District Hospital, Dhamra assigned

the type injury the presence of Smt. Shyam Kato deceased on 28-12-1974 in 4 to 5 PM, and he found the following injuries on her person:

1. Lacerated wound with irregular margins 2 x 4 cm X 4 cm X 3 mm deep on the left side forehead just above left eye brow. No thickening or clearing possible around the wound.

2. Contusion red on the right upper eye lid 3-cm X 1 x 2 cm over nose.

18. He could not ascertain the nature of injury No. 1 and advised C. as in respect of injury No. 1 the way of confirmation is according to her injury No. 2 could be caused by means of a bar with both the injuries of head. Smt. Shyam Kato went to her job. As stated above, Smt. Shyam Kato was concerned by her injuries in the district hospital at 3-40 P.M. on 21-12-1974 and after carrying out of injuries in the dead body of the deceased, her corpse was sent to the medical officer for post mortem examination.

19. Doctor R. S. Kapoor conducted autopsy on the dead body of Smt. Shyam Kato on 21-12-1974 at 7-30 P.M. and he found the following contusion and abrasion on her person:

1. Lacerated wound 2 1/4" X 1 1/2" X 10" X 1 mm deep on forehead just above left eye brow formed from forehead fractured and from matter coming out of wound.

2. Abrasion caused 1 1/2" X 1/2" over left brow below parties.

3. Abrasion caused 1" X 1/2" on back of right shoulder at base.

17. On external examination, the frontal bone was found fractured in triangular pattern and was depressed. There was also multiple irregular fractures at the scalp. The parietal plate on left side was also fractured. However, there was neither any wound of head nor contusion on the scalp. Multiple points at which of bones were found in the left forehead bone.

18. According to the opinion of the doctor the death was caused due to injury to the brain.

19. Doctor R. K. Mehta D.W. 1 Medical Officer, District Jail Bikaner examined the injuries of Bhanu Das deceased on 29-12-1974 at 10-20-12-1974 and he found the following injuries on her person.

1. Abrasion with scalp 2 x 1/2 x 1 cm extending left side of forehead being 1 cm above left eye brow.

2. Abrasion with scalp 1 x 1 cm X 1/2 cm back of right palm at between junction of index and middle fingers.

3. Abrasion with scalp 2 x 1/2 x 1 cm back right palm being 2 cm behind wrist No. 2.

4. Contusion black 2 x 1/2 x 1 cm back left elbow.

5. Contusion black 1 x 1/2 cm over left left forearm being 10-cm left elbow joint.

6. Abrasion with scalp back, lower tail part of left middle finger being 1/2 x 1/2 x 1 cm.

20. According to the opinion of the Doctor all the injuries were simple in nature and the duration was about two days and the injuries were caused by blunt weapons.

21. Appellants denied the charges attributed to them and pleaded that they were implicated in the case due to conspiracy. They also examined two witnesses in their defence namely, Bhanu Kumar A alias known D.W. 1 and Doctor R. K. Mehta D.W. 2.

22. We have heard Mr. S. S. Tanna, the learned counsel for the appellants and also the learned counsel for the State as a joint length and we are of the view that the prosecution has failed to prove beyond the shadow of doubt the appellants beyond a reasonable doubt.

23. In support of the prosecution case, 12 witnesses in all were examined and out of them, Bhanu Chaud P.W. 3, Mr. Katar P.W. 4 and Bagherwadi Singh P.W. 5 were examined as witnesses of the occurrence. In Bhatia Shyam, Master, Bikaner, Expert was also examined to establish the injury caused by the 12 witnesses. From the report by the Investigating Officer was the shot which was fired from the licensed gun No. 1 belonging to Bhanu Das appellants. He has prepared the report. (Ex. Ka 10).

24. Bhanu Chaud P.W. 3 and Mr. Katar P.W. 4 on the day of Smt. Shyam Kato deceased, Bhanu Chaud went along on the day of the occurrence at about 7-30 A.M. appellants and an accused Bhanu Das armed with these weapons was stated above name of Mr. Bhanu Chaud for was working upon

the also start place — Exit at the door of Kalachar along with Sri Kathan Rayharank and others. Brother Das accused the other two companions to kill and abduct, in the early morning, the appellants and accused Madhukrishna and therefore him and others. On leaving the room, Madan Singh Prasad Singh, videbany P.M. Singh and others and other witnesses, Sri Mohan Lal, Mohan Lal, also emerged from inside the house and witness a man opened his mouth his gun and and for brother Sri Kathan and also to uncle Mohan Lal had returned answers and the other, the accused had swapped into the house of Sri Kathan appellants. On leaving the place again, in there a number of persons had entered inside the house of Babu Ram and they had entered the room from outside. He further stated that he was given a report of the occurrence and proceed for the Police Station and handed over his report to the Head Constable at the Police Station.

25. P.M. 7 Sri Kathan has corroborated the statement of his brother Ramrath Chaud. He stated that he was brought by Kalyanaram in his house together with his brother and parents and he was adopted by him as his son. His brother stated that Kalyanaram had also deposited Rs 2000/- in the post office in Lucknow and he had made him the receiver. His brother stated that when Kalyanaram was, he was in P.O. 11 P.M. at the station, while in his death was persecuted by him but the brother of Kalyanaram, namely Brother Das accused, wanted himself to get the amount of Rs 2000/- deposited by Sri Chandra Bhabha. Das wanted support for Babu Ram appellants in the matter and there had also wanted support under for which he had been sent a case against Babu Ram and others. He further stated that Kalyanaram appellants and others were under a conspiracy but he declined to do so. Sri Kathan corroborated the statement of Sri Ramrath Chaud appellants, he further said that also appear along with his mother, his brother Ramrath Chaud and uncle Mohan Lal.

26. Rayharank P.M. 8 is a Charan of Ramrath Chaud P.M. 1. He has also given the statement consistent with the statement of the accused P.M. witnesses.

27. The learned counsel for the appellants pointed out that the oral statements of these

witnesses is incompatible with the medical evidence inasmuch as there is a complete absence of gun shot injuries on the person of Sri Shyam Kalyan Chaud, Sri Kathan and Mohan Lal.

28. We have given our serious thought to this aspect of the matter and we are not prepared to believe the prosecution version. The appellants Babu Ram stated that he was making conspiracy with Ramrath Chaud P.M. 1, Sri Kathan P.M. 7, Mohan Lal and Sri Shyam Kalyan Chaud at about 7.30 A.M. on 24-12-1974. The possibility of the suggestion by the learned counsel to the witnesses that the occurrence had taken place only in the morning when it was dark cannot be ruled out.

29. It is no doubt true that Ramrath Chaud P.M. 1 and Sri Kathan P.M. 7 though highly educated witnesses are aged and their memory cannot be looked into easily. Their statements have to be compared with physical and medical evidence to place reliance on their versions and the question whether persons do not exclude their presence from the place of the occurrence has more impact on their persons, provide no guarantee that they are telling the truth in their evidence made in conflict with the medical evidence. The conflict between their version and the medical testimony has rendered the veracity of their statements doubtful and even unreliable and cannot be accepted for the conviction of the appellants in this case. It appears that these aged witnesses and the Rayharank Singh P.M. 8 have committed the fault in the ability of their version is quite evident by the absence of gun shot injuries on the person of the accused. Ramrath Chaud, Sri Kathan, his uncle Mohan Lal and his mother Sri Shyam Kalyan Chaud, we have given our serious consideration to the evidence of these witnesses and we are fully satisfied that these witnesses have given an unreliable account of the occurrence and committed the fault which has made their evidence unworthy of reliance. It was further contended that six independent witnesses were brought at the trial, but though a number of independent persons of the village were alleged to have witnessed the occurrence. There appears to be some element of collusion in the confessions advanced by the defense as there is no

explanation on the record as to why independent witnesses who were stationed outside P 7 1/2, were not produced during trial in the prosecution. Moreover, independent witness leading to the occurrence is also missing in the case and it is, thus, not understood why as to who, all of a sudden, the appellants would attack Ramkish Chaud and others, in the night of the occurrence.

30. The defence has examined Doctor R. K. Mehta D/W P Medical Officer, Dettoria and Chaud who conducted the medical examination of the victim on the person of Doctor Chaudhary. According to the Doctor, Doctors Chaud had observed an injury on the person which were through multiple were inflicted by means of blunt weapon and according to an accurate print out by the Doctor, these injuries could be caused by a fistulae in the morning with P 7 1/2. It was noted, submitted by the learned counsel for the appellants that the wounds of accused Doctors Chaud were not at all explained by the post-mortem analysis submitted in this case. The evidence of the prosecution witness is further bolstered by their failure to explain the injuries on the person of Doctors Chaud and, therefore, the prosecution evidence in this case is rendered tainted with doubts and speculations.

31. It is to state that the Ballistic Expert Rakesh Sharma D/W P is of the view that the empty cartridges Ex 20 found at the place of occurrence by the investigating Officer was fired from the gun Ex 1 belonging to the victim accused. The first investigating Officer Lokesh Singh P 7 1/2 is of the view that he had tested the accused gun Ex 1 bearing No. 224 belonging to him from around four one of the rooms of his house on the day of occurrence. He further stated that he had also found two empty cartridges and shells from the place of occurrence the same day during spot inspection and when preparing the inventory return he had sent the gun and the two empty cartridges and shells to Police Station. Ballistics from the place of occurrence through Constable Mahesh Singh and Kamal Singh who had deposited them in the Magazine of the Police Station the same day.

32. Constable Mahesh and Kamal Singh Ex 26 stating that on 28/12/1974 he had

accompanied to Police Officer to the office of the occurrence from the Police Station Ballaria and the Station Officer had entrusted him with the sealed bundles concerning gun 2 empty cartridges. Heed stated even so, he deposited the same in police station Ballaria and he had deposited them in the Police Station the same day. Interview P 7 1/2 Constable P. S. Ballaria stated that he had received two sealed bundles on 28/12/1974 sent by the Station Officer from the place of the occurrence through Constable Mahesh and he had deposited the same in the Magazine of the police station Ballaria and he had also made an entry in the General Diary of the Police Station about the same and a true copy of the said entry is Ex Ka 9. He further stated that on 12-1-75 he had sent two sealed bundles containing gun and empty cartridges to the Ballistic Expert, Lucknow for examination and report through Constable Singh. He made an entry of the same in the General Diary of the police station and copy of the said entry is Ex Ka 4. He further deposed that on 16/1-75 Constable Mahesh had returned to Police Station Ballaria with the deposited sealed bundles containing gun and the two empty cartridges after getting them examined by the Ballistic Expert, Lucknow. He had deposited the two sealed bundles in the Magazine of the Police Station and made an entry in the General Diary of the Police Station and copy of the same is Ex Ka 11. He further deposed that on 17/1/1975 the two sealed bundles concerning the case were sent to Sd/- Mahesh through Constable Kamal Singh and to the effect a note in the General Diary was made by Constable Singh and he had obtained the signature of Sd/- Chaud on the aforesaid General Diary, where, and a true copy of the same is Ex Ka 12. The prosecution has tendered in evidence the affidavit Ex Ka 3 of Constable Kamal Singh showing that the aforesaid and also the two sealed bundles from the Magazine of Police Station Ballaria and had deposited them at Sd/- Mahesh. Even on the same day, The prosecution has further tendered in evidence the affidavit Ex Ka 17 of Ram Sharma Lal, Head Constable, Sd/- Mahesh, Barab showing that he had received two sealed bundles sent by Police Station Ballaria on 17/1/1975 through Constable Kamal Singh and he had deposited them in the Magazine

the same day. The evidence P.W. No. 24 further bears this out since this constable Chaudhary took two sealed bags containing gun and cartridges from police station Buldana on 13.12.1975 and got sealed them before the Sub-inspector at Lucknow for examination and report and he had returned from Lucknow on 16.12.1975 and he had deposited them in the Mahabans of the Police Station Buldana the same day.

It may be noted that the Investigation No. 2776 of 1975 by Investigating Sub-Inspector was sent to Government from his house by the Investigating Officer, Lucknow Singh P.W. 23 on 20.12.1975. The same day the Sub-inspector also recovered two empty cartridges from the same of occurrence and kept the gun and also the two empty cartridges in sealed covers. The Investigating Officer had sent the gun and the empty cartridges along with other recoveries from the spot to the Police Station Buldana through constable Madan Singh who had deposited the same in the Mahabans of the Police Station. It is established that gun and the two empty cartridges remained lying in the Mahabans till 2.2.1976 when the gun and the two empty in it sealed covers were sent from the Police Station Buldana to the Police Station, Lucknow for examination and report through constable Chaudhary. Constable Chaudhary returned from Lucknow after getting the examination of the empty cartridge and the empty cover to the Buldana. Report Lucknow on 16.2.1976 and deposited the same under Mahabans of the Police Station Buldana. Manual P.W. 1 had constable off P. S. Buldana had deposited the gun and the two empty cartridges and other articles of the case in Subar Mahabans Buldana through constable Kanta Singh on 27.2.1976 and the same were deposited in the Subar Mahabans Lucknow the same day. It is therefore abundantly clear that the gun belonging to Babu Ram appellant secures two empty cartridges recovered from the place of occurrence and lying in the Police Station Buldana for about 49 days and were ultimately sent to the Subar Mahabans Lucknow on 27.2.1976. The Investigating Agency did not send the two empty gun and the two empty cartridges to the Subar Mahabans Lucknow from Police Station Buldana but brother's acquaintance with the previous contained in the O.P. Police Regulations. The crucial conduct of the

Investigating Agency ignites a shadow about the act or receipt by the police and, therefore, it is fairly doubtful that the two empty cartridges Nos. 21 & 22 were really recovered from the place of occurrence by the Investigating Officer. The suspicion of the learned appellate the appellant that his empty cartridge No. 23 was really the Buldana Government's evidence when it was found at the Police Station with the gun of 1 crime appellant Babu Ram is not without. Justice. It is probable that the Investigating Agency had tampered with the alleged recovered empty cartridges from the place of occurrence by replacement by bringing two cartridges at the police station by the gun of Babu Ram appellant, which he ruled out. In view of the circumstances as stated above it is not proposed to believe that the empty cartridge No. 23 was really recovered from the place of occurrence by the Investigating Officer.

31. Considering all the facts and circumstances of the case as mentioned above we are fully satisfied that the prosecution has failed to bring home the gun against the appellant.

32. In the result the appeal allowed the trial conviction and sentence imposed by the trial court is set aside. The appellants are set free. They need not surrender. Their bail bonds are discharged.

33. The trial court is directed to return the judgment that the 1st being No. 2226 in Babu Ram appellant.

Appeal allowed

1986 ALL. C. F. 133

1 P 50-CH 1

Dr. Akh Jeeval, Fernandez P. L. Fernandez and another Respondents

Crd. Criminal Petn. No. 36 of 1985 Cr. 4 2/1985

Contempt of Court Act (19 of 1971), S. 18 — Jurisdiction under — Disobedience of order passed by the subordinate Court — Not the High Court but the subordinate Court, itself

CONCURRENCE WITH BSE

take cognizance of the offence. **1988 AMCJ 38**  
**Rott** (Civil PC) (S of 1986), O. 36, R. 2.46  
 (Para 74)

**Cases Referred: Chandelwood Farm**  
**PRO** AMCJ 30 4  
 (2007 FC 45) OJMAN 389 (2007) 1 Cal LJ 85  
 4  
**PRO** AMCJ 186 (2003) Cal LJ 1211 7

#### Protest Groups for Prisoners

**1993233** re: That contempt prison is an inherent case

3. On Alta Journal the prisoner testified the contempt prison against the respondents that they have committed civil contempt by obstructing order of blood tests. **1993233** cited 28 135 pages in Civil Stat No. 46 of 1984 which is in following terms:

**Called-up: Prisoner's prison. Defendants**  
 was joint, first House to O.P. upon being 20  
 135 for obstructed prison. **1993233** demands  
 you may be maintained. **1993233** are:

3. In my view upon the order was passed  
 1. the Court of Appeal for the contempt of duty  
 has to be proceeded against the respondents  
 under the provisions of O. 36 R. 2.4, C.P.C.  
 and the Court should not take cognizance of  
 the same

4. The learned counsel has argued that  
 8. 10 of the Contempt of Courts Act involves  
 jurisdiction, power and authority under Court  
 in respect of the contempt of Courts subordinate  
 to it. The contempt of courts cannot be  
 referred but is already mentioned above the  
**1993233** that if any respondent passed  
 or order made under O. 36 R. 1 or 2 or the  
 breach of any of the terms of which the  
 injunction was granted or the order was made  
 should also be referred by the Court granting the  
 injunction or making the order as provided  
 under O. 36 R. 2.4, C.P.C. and if this Court  
 finds the respondent guilty of such  
 disobedience or breach then upon them  
 referring the property of the person guilty of  
 such disobedience or breach to be attached  
 was also order such person to be detained in  
 the civil prison for a term not exceeding three  
 months

5. The learned counsel for the applicant  
 has argued that when the situation is open  
 in two forms then it is for the applicant to

choose the forum and on this principle the  
 court felt that the remedy under O. 36 R. 2.4,  
 C.P.C. is open and he is not to the present  
 application before the Court in exercise of its  
 jurisdiction power and authority under the  
 Contempt of Courts Act. In support of this  
 contention he referred to the decision in **State**  
 v. S. H. Datta (2003 AMCJ 186) (2003) 1  
 Cal LJ 85. In this decision the order of the applicant was  
 in that which is an offence under the Indian  
 Penal Code. The argument that the person  
 responsible for that can be proceeded against  
 under the Indian Penal Code and not under  
 the Contempt of Courts Act for committing  
 contempt of Court was rejected. The reason  
 was that the two offences were distinct and the  
 mere fact that the person liable can be  
 proceeded against the latter, would not exclude  
 the jurisdiction of the High Court to punish  
 that person for an offence under the Contempt  
 of Courts Act

6. But, in the present case, there is only  
 one offence. The question arises as to whether  
 the contempt should be punished by the Court  
 under the Contempt of Courts Act or it should  
 be left to be punished by the Court of Appeal  
 under the provisions of O. 36 R. 2.4, C.P.C.  
 This question would involve exercise of  
 discretion by the Court. There is no doubt that  
 the jurisdiction power and authority to punish  
 the contemner under the Contempt of Courts  
 Act by the Court is discretionary inasmuch as  
 the matter of contempt is between the Court  
 and the contemner and the applicant who  
 moves the application for contempt is only an  
 outsider and he had no vested right to get the  
 Court to proceed in the matter. To my mind  
 the Court would be exercising a better  
 discretion if the matter of punishing the  
 contempt of Court subordinate to the Court  
 is left to be dealt with by the subordinate  
 Court itself if the law permits that way. In this  
 contention reference may be made to the  
 observations of J. J. Ayer in **Law of Contempt**  
 of Courts 6th Edition (1983) page 157 which  
 reads as follows:—

Section 106 of the Contempt of Courts Act  
 (1952) no doubt vests the High Court with  
 ample power to take cognizance of such  
 contempt committed with regard to the Courts  
 subordinate to the High Court which is an  
 appropriate case may be occurred. But this  
 does not mean that in each and every case of

such an alleged contempt the High Court should exercise such power, allowing the same to be used in a convenient substitute for the specific remedial orders provided by law. Violation of the order of suspension continuing disobedience to its order, of a Court subordinate to the High Court, if disobedience continues and contempt as defined by the Act and the High Court may also be viewed with power to direct suit for such contempt. But civil contempt is to be dealt with suit remedial, the parties object being to enforce the order for the benefit of the party, as where during the order has been made, though being the nature of and contempt it would be reasonable to think that where the disobedience specifically provides a remedy for breach of such order and also the means for its enforcement, the parties must normally avail of such remedy and the High Court should not encourage by passing such remedy by setting proceedings under the Contempt of Courts Act. (*Calcutta Medical Socy v. Eastern Pw. Ltd* (1975 77(2) Cal 979, 309-110).

7. Of course, in the above observation remedial action is given where law is there reading of O 23 R 2 A, C.P.C. indicates that depends of propriety in the given policy of disobedience or breach and one has standards, persons upon this. At the same time some observations by emphasis on the point that where alternative remedy is specifically provided by law, the parties must normally avail themselves of such remedy and the High Court should not encourage by passing such remedy by setting proceedings under the Act.

8. The pre-emptive violation occurred as defined by the in the earlier program dated 3 1984 in Civil Misc. Contempt Appeal No. 261 of 1984. *Ans. Ahmed Khan v. State of U.P.* (Reported in 1985 All LJ 56).

9. In spite of above direction I am inclined to refuse the present challenge proceedings in this Court. The contempt because a therefore demand of courts (the application of no demand any work, but merely under O 23 R 2 A, C.P.C. in the Court below.

Forces demand

## 1984 ALL LJ 56

H. N. SINGH AND A. N. YADAVA JJ

Kamal Singh Yadav, Petitioner v. Vice-Chancellor, Aligarh University, Aligarh and another, Respondents.

Civil Misc. Writ Nos. 15941 and 15942 of 1984. D-179 1985.

[14.] U.P. State Universities Act (18 of 1973), S. 2(d). — Aligarh University, Admission Rules (1966), Rr. 1, 2 and 32. — Admission to postgraduate studies — Examinations to postgraduate students who discontinued at earlier session — Those were notwithstanding — Students can seek fresh admission — Petitioner wrongfully admitted — Cancellation of admission is legal.

Under the Rules there is a complete bar to readmission of a student of any Post Graduate Class who discontinues his studies after admission. It very clearly provides that such students shall not be eligible for readmission to the class or any subsequent session. The petitioner in the instant case was counsel under R. 1 and was not entitled or even eligible for readmission after they discontinued their studies after admission. The respondents could not claim that they had varied rule of the admission as they had already been previously admitted to the class concerned in the previous session, though for some reason they had discontinued their studies. Such a right is not only not contemplated by the rules but is specifically barred. Hence the cancellation of the admission of petitioner who was wrongfully admitted subsequently is legal.

(Para 15 to 20 26)

[15.] Constitution of India, Art. 226 — U.P. State Universities Act (18 of 1973), S. 26. — Aligarh University Admission Rules 1966 Rr. 1 and 2. — Admission to postgraduate studies — Examinations to postgraduate students who were previously admitted and had discontinued their studies — Examinations given to petitioners wrongly, cancelled by resolution subsequently — Order of cancellation cannot be quashed by High Court as it would result in perpetuation of illegal order. 1975 All LJ 1117 (14).

(Para 26, 27, 28)

1975 Calcutta 30 (14)



(C) C.F. (non-University Act) 1973, S. 46 — Aligarh/University Admissions/Bills, 1984, Pt. I and II — Admission to postgraduate studies — Examination to examine who determined in earlier session — Examination given (Suppl. — Subsequent certification of examination is legal) — In fact it was not relevant and did not over-riding — Question of admissibility remains. (Evidence Act (1 of 1872) S. 115)

(Para 41)

Cases Related	Chronological	Para
AIR 1984 SC 124		31
REPEALABLE (1971) 1 SCC 32	AIR 1971 SC 1834	30
AIR 1971 SC 876	(1971) 2 SCC 146	1971
Lak. SC 323		36

R. K. Yadav, for Petitioner Seeking Counsel for Respondents

A. N. VADGA, J. — These two petitions are being disposed of by a common judgment as the issues raised therein are substantially identical. The petitioners have assailed the legality of an order passed by the Vice-Chancellor of Aligarh University cancelling their admission to certain Post Graduate Courses of Study. The orders passed by the Vice-Chancellor have been communicated to the petitioners by the Registrar of the University on August 24, 1985.

2. The cancellation of both the petitions' admissions is based on two grounds. First, that the petitioners have remained in the rolls of the University for more than eight years prior to their readmission which was granted by their attorney to an ordinance of the University which provides that for maximum duration of years for which a student may remain on the rolls of the University as a regular student the number shall be 10. If a Degree shall be eight years. Second, that admission was not granted to them by the Director of Admissions who alone was competent to admit students to the Post Graduate Courses of Study. The correctness of the perception of the matter of facts are provided a synopsis in the end of this case as the opportunity was afforded to the petitioners the principles of natural justice were strictly followed resulting the proposed orders completely valid and sustained as the liable to be quashed by the Court.

3. Learned counsel for the respondents put 100 questions to three persons who had 1985 were petitioners. A submission on August 21, 1985. He has also filed number of affidavits in both the petitions. Before we deal with the substance of the learned counsel for the petitioners and their friends we deal with the relevant facts.

4. The petitioner Karnal Singh Yadav was first admitted to the respondent University in B. A. after law to admission Session 1972-73. He was qualified to enter to pursue any various courses of study from the session 1972-73 up to 1980-81 when he joined LL. B. (34) and Examination as an ex-student. On May 21, 1981 he was admitted from the University for a period of two years to the order of the then Vice-Chancellor on account of his alleged involvement in some movement which took place on February 13, 1981 within Department of Ancient History, Culture and Archaeology. For the year 1981-82, however, the petitioners had taken admission for LL. B. (Part I) Course and had also deposited the annual fee and other casual dues but he did not commence his studies after his admission. After a gap of some years Karnal Singh Yadav made an application on July 27, 1985 stating that he was admitted to the LL. B. (Part I) Course for the session 1984-85 after owing to some personal difficulty he neither appeared at the said examination nor could he complete his attendance. After stating these facts he requested that he be readmitted to the LL. B. (Part I) Course for the session 1985-86 so that he might attend classes and appear at the LL. B. (Part I) Examination as a regular student. Karnal Singh Yadav states that after making this application he approached the Chairman of the Admissions Committee for R. K. Saxena who told him that he had no authority to grant readmission and that the petitioner may approach the Head of the Department of Law who forwarded the petitioner's application to the Dean of the Faculty of Law who passed an order on Feb. 27, 1985 directing the Head of the Department of Law to admit him. The same day the Head of the Department made an endorsement on the petitioner's application which reads as follows:

upstairs.

The Dean has been pleased to advise Shri Karnal Singh Yadav on LL.M. for Year VIII (50 marks).

Kindly receive the debt for the year from him.

5. The Head of the Department also made the following endorsement in the Chairman of the Admission Committee's certificate:

Shri R. K. Sinha

As the Dean has advised Shri Karnal Singh Yadav on LL.M. (Part I) (50 Marks), no further action is necessary and to him.

6. The petitioner thereafter wrote that when his case was one of thousands the matter was referred to the Acting Vice-Chancellor Dr. T. Panigrahi who passed the following order on August 6, 1985:—

The Agent

State Bank of India

Allahabad University Branch

University of Allahabad

Chairman

Admission Committee for LL.M.

University of Allahabad

The admission list of Shri Karnal Singh Yadav for admission in the LL.M. (Part I) was duly placed to deposit with the Allahabad University Branch of the State Bank of India. The necessary certificate of admission may please be issued by the Chairman, Admission Committee for LL.M. University of Allahabad, as desired by the Finance Officer, University of Allahabad.

Shri T. Panigrahi

Acting Vice-Chancellor  
University of Allahabad

7. The matter was alleged by the petitioner (as Chairman of the Admission Committee) Shri R. K. Sinha, concerned the actual debt and other items of the University and considerable advice was given to the petitioner. Thereupon the petitioner deposited the loan on 6/8/85. The petitioner further stated that after realisation he received his admission card from the University and thus became a formal student of the same. At this point it is important to mention that Dr. T. Panigrahi immediately after

among the interested parties concerned (Agent) + Title + advice was given to the State Bank by means of a letter dated August 4, 1985, stating it not to allow the petitioner to re-appear for the exam. He had after doing the formal registration from where other students may appear might not be permitted admission to classes + in accordance to the country's law.

8. On August 10, 1985, the learned District Judge, Allahabad, advised that his case was one of thousands and was a case of thousands. The Head of the Department, LL.M., was a former employee of the University. That employee (10) of his position a file had started. It is further stated that the case of the petitioner was of thousands but it was one of thousands and therefore it was recommended by the Dean Faculty of Law, in the Head of the Department of Law, and approved by the Chairman of the Admission Committee. It is further advised that this is a case of thousands, therefore the matter was placed before the Vice-Chancellor (Acting Vice-Chancellor) who after examining the case of the petitioner, advised the Chairman of the Admission Committee for LL.M. University of Allahabad, namely Shri R. K. Sinha to issue an admission card to the petitioner and upon receipt of deposit card by the Chairman of the Admission Committee in the petitioner deposited the required fees and other documents and the Chairman of the Admission Committee issued advice. The petitioner further stated at the point that at the time since duly admitted in LL.M. (Part I) for the 1985-86 session, he had a vested right to continue and complete his studies in LL.M. (Part I). Consequently, a letter was submitted to that effect for the session 1985-86 his admission could not be cancelled by the Vice-Chancellor.

9. As regards the petitioner Shri K. N. Singh, the petitioner is that he made an application on August 3, 1985, stating that he was admitted to the admitted class for the session 1985-86 and had also deposited the admission fee, but for certain reasons he could not get himself enrolled. After doing these facts he made a request that he be admitted to the said course so that he might appear at the M.A. (Pre-Exam) Examination at the subject of Hindi. The application was addressed to the Registrar/Head of the Department of Hindi. The letter made to

maintain that the same day, upon the application submitted that if a petitioner could be admitted he had no objection. Therefore the Registrar made a note upon on August 3 1965 that on the consideration of the Director Admission Committee in the office that application which was in placed on the informal no objection to admit of the Head of the Department The Assistant Registrar Committee had done the application on the 11/8/65 the order for application order on the application previously on the grounds of irregularities and inadmissibility considered to have to be sent back to the Vice-Chancellor could not say order on the application the petition made a second application on August 6 1965 before the Acting Vice-Chancellor Dr T. Pan who was allowing for the Vice-Chancellor who happened to be on leave under date 10/8/65 the petition Bhola Nath Singh had been admitted to the M.A. (Hons) Class but for some reason he could not deposit his fees that year and requested the Acting Vice-Chancellor to permit him to deposit the fee. The petitioner was obviously referring to his admission in the class made in 1961-62. It is significant that respondent did not discuss with application that he had already submitted his application for his admission on August 3 1965. The Acting Vice-Chancellor upon his application issued the following letter addressed to the State Bank of India/Charman Admission Committee, M.A. (Hons) II Hindi which reads as follows:—

As stated by the Finance Officer University of Allahabad, the Charman Admission Committee M.A. (Hons) II Hindi only petitioner a certificate of admission for enrolling Mrs Bhola Nath Singh to deposit his fee at the State Bank of India Allahabad University and inform him to take into:

Dr. T. Pan  
Acting Vice-Chancellor  
University of Allahabad 6-8-65.

11. The petitioner too has asserted the petition that he had a right to be readmitted and having been duly admitted by the order of the Acting Vice-Chancellor his admission could not be legally cancelled by the Vice-Chancellor. Here again it may be mentioned that Dr. T. Pan, the Acting Vice-Chancellor

Indraprastha withdrew the nomination given to the State Bank of India by means of his letter dated August 1965 referred to above. The Acting Vice-Chancellor had in the letter unequivocally stated that the petitioner should not be able when deposit their fees at the State Bank of India because that they might not be properly admitted candidates. Hence or instead of depositing the fees in the State Bank of India the petitioner deposited their fee through the office of the University on August 9 1965 at in the meantime the date in the university office, had been called off on August 11 1965.

12. In its counter affidavit filed on behalf of the respondents, it has been stated that neither side the two petitioners had any right of readmission in the class in which they had sought readmission on the basis of their previous admission to those classes. The respondent University further contends that in very case in the petitioners were seeking admission to the Post Graduate Class the same could not be granted by any authority other than the Director Admission Committee. It states the case of the respondents University that both these petitioners had assumed on the rolls of the University by more than eight years previous their readmission and consequently under the Ordinance referred to above the Vice-Chancellor as the Chief Executive Officer of the University rightly cancelled their admission.

13. Having set out the materials and counter material of the parties we proceed to consider the legal propositions advanced by the learned counsel for the parties. In our opinion, the first and the basic issue to be considered is whether the petitioners had at all any right to their readmission on the basis of their previous admission to the classes in which they had once been admitted in the past. If the issue is answered against the petitioners we have no doubt that no relief can be granted to them as the right to readmission in the same foundation of the petitioners claims. It is apparent that if there is no legal basis whereby the petitioners re-claim readmission, there is no relief whatsoever cannot be granted to completely read and perfected in law, and that Court in its exercise of jurisdiction under Article 226 of the Constitution would not be justified in granting

as is for the result of which a suit is maintainable for suspension of orders which are not set aside.

13. We will therefore first have a look at the relevant statutory provisions. The Aligarh University is governed by the U.P. State University Act. Admissions to the various courses of study are therefore regulated by the provisions of the Act. Section 31 of the Act provides that there shall be an admission committee of the University the composition of which shall be such as may be provided for in the Ordinances. The Admission Committee is one of the members of the University's governing body. Section 19, Sub-section (2) of Section 31 provides that the Admission Committee shall lay down the principles or norms governing the policy of admission to the various courses of study under University and may nominate a person or sub-committee to discharge its authority on appeal of any student.

14. Under Section 31 which is quoted in the Admission Committee of the respondent University has been laying down various rules laid to cater to Rule 25. With the Admission Committee needs rules for admission to classes. Rule 1 is so far as it is relevant for our purposes provides:—

1. A student of any class who fails the Examination concerned or after failing the condition of eligibility for appearing in the Examination concerned fails to appear in the same, shall not be eligible for readmission to the class concerned in any subsequent session but may appear in the Examination in a subsequent session as an ex student subject to the Ordinances' regulations and rules governing the admission to Examinations of ex student.

The ordinance is a proviso which makes an exception to the rule of students of various classes who may be readmitted in the class of study in the Mathematics of various courses of study subsequent session and the proviso provides that a student may also apply for readmission but to be submitted to the Head of the Department for consideration. However, the proviso deals with the persons or courses of study or examinations where there is such a student though readmission and hence the student not being

readmitted later. There is also Rule 2 which is the one which governs the case of the persons who provide.

2. A student of any Part I or even Part Year Class who discontinues his studies after admission or otherwise fails to fulfil the condition of eligibility for appearing in the Examination concerned shall not be eligible for readmission to the class in any subsequent session.

The next relevant rule is Rule 3 in relation to:

3. A student of any Part I or even Part Year class governed by rules 1 and 2 and above may apply for admission to the class concerned in a subsequent session as a fresh candidate in the first semester and within the time period notified for such application for fresh candidates. His application for admission shall be considered along with the applications and in accordance with the rules governing the admission of fresh candidates and he shall not be entitled to any special consideration on the ground that he had been admitted in the class concerned in any previous session.

15. It will thus be seen that under the aforesaid rules there is a complete bar to readmission of a student of any Part I or even Part Year Class who discontinued his studies after admission. It was clearly provided that such a student shall not be eligible for readmission to the class in any subsequent session. It is undisputed that both the petitioners fall within the ambit of Rule 1. They were both students of Part I First year Class (B.Sc.) in the subject of Mathematics and other in the U.P. State of Hindi (Hindi) discontinued their studies after admission. They were hence clearly ineligible for readmission to the class in the subsequent session.

16. The above provision has been made more explicit by what is stated in Rule 1 quoted above. Thus while a person with students to apply for admission to the concerned class in a subsequent session as a fresh candidate on the prescribed time and within the time period notified for such other fresh candidates, it specifically mentions that their applications for admission shall be considered along with the applications and in accordance with the rules governing the admission of fresh

candidates and that they shall not be entitled to any special consideration on the ground that they had been admitted to the class mentioned in the given cut scores.

17. The petitioners took this exception to the rules laid down above in that the petitioners were not provided with an eligible job opportunity. Now, as noticed above, the given cut-off of the petitioners in that they had a standing in the examination because they had already been previously admitted to the class concerned under points, it seems enough for some reason they had demonstrated their fitness. Such a right is not only not substantiated by the rules but is specifically barred.

18. The petitioners have pointed to their previous copies of their applications for admission, the contents of which have already been set out hereabove. They are simple applications for admission not containing any particulars which are required to be disclosed for fresh admission and of course they are not in the prescribed form. The request for readmission made by the petitioners was made on the sole ground that they had been admitted to the class concerned in the past under previous rules and so that they had been seeking readmission for which appropriate credit for dispensing fees etc. might be asked. The petitioners' applications were neither considered nor provided as applications for fresh admission.

19. Fresh applications involve a consideration of facts which are altogether different from a simple application for re-entry or to claim a fresh admission as under the rules previously in operation. In simple cases also, as we shall presently demonstrate with reference to the rules for admission, a comparison of various merits of all the candidates applying for admission.

20. Thus the general rule laid down by the Admission Committee in May 1962 for admission of students was not a simple one, but that provision will be given to graduates of the university who are graduates in the previous year and that the latter may be considered for admission after a certain period of time under qualifying examination by 75% of the aggregate marks. Rule 17(2) of these Rules provides that the relative merit of candidates for

admission shall be determined in the manner laid down above. The first six sections of the Aligarh University and other Universities etc. given preference over the second documents and the second documents that the first document and so on. In the case of the admission to L.L.B. Class also then, it is a similar rule which shall be applied.

21. Before more of candidates for admission to L.L.B. course shall be considered in the following order of category:

(a) Law graduates of Aligarh Law College with 60% marks or above at the L.L.B. Examination.

(b) Law graduates of other Universities with 60% marks or above at the L.L.B. Examination.

(c) Law graduates of Aligarh Law College with 55% marks or above at the L.L.B. Examination.

22. Likewise in the rules framed by the Admission Committee in September 22, 1962 there are provisions which lay down that candidates shall be admitted to Previous Year Classes of the following subject in only so far as the marks are determined by the class. The marks laid down are more elaborate rules as mentioned in the previous rules mentioned above. Fresh graduates are given a preference over the graduates and previous year students in the case of the least marks marks are deducted while comparing their aggregate by way of discount.

23. It will thus be seen that fresh admission, simple admission, different considerations and orders. The petitioners' applications could not have been treated as applications for fresh admission and it is for this reason that the Director of Admissions had expressly decided to consider for same.

24. It is to be noted that the learned counsel for the Kamal Singh Yadav however placed reliance on Rule 22(a) of the admission rules for admission framed by the Admission Committee in May 1962 and is invited that under the sub-paragraph to Part II Previous classes of students who discontinued their studies in the middle of the course is permissible at the discretion of the Heads of the Department or the Dean concerned, and research in Kamal Singh Yadav had been

submitted by the Head of the Department, of Law, the students could not be considered by the Vice-Chancellor.

24 We are unable to agree. In the last place, Rule 22 shall have no application in decisions have been explained by the Allahabad High Court. Administrative Commission on 14.12.1984 mentioned also a which does comparatively with the other subject of students to choose. Secondly, Rule 22 does not supersede or amend control of admission. Rule 22 is so far as it is relevant provided.

25 First instance of students to be considered by the following rules:

(a) Students who had in any class or after completing their matriculation had no power in the matriculation day to attend or any other exam will not be considered. They can appear in the matriculation examination as students if they may get some for study as a student. Students of the Head of Department concerned matriculation in future willing to take them in special exam, etc.

For that that the rule may be revised in special circumstances at the discretion of the Head of the Department or the Dean concerned, if there are any reasons.

Provided further that students in admitted shall exercise a writing class right to appear as students and their admission to be governed by the Department and matriculation. In the admission requirement governing regular students of the University. Data mentioned as regular students, they will not be permitted in the matriculation year for appearing as students.

(b) Students of Part I and Promote class who discontinue their studies in the middle of the session should, who have been discontinue due to shortage of students, or, not needed to be matriculated. They will be treated as fresh applicants and can take their chance along with other applicants at the discretion of the Head of the Department or the Dean.

26 In our opinion, clause (b) of Rule 22 shall not apply only to the necessary explanation provided that the applications for matriculation of students of Part I or Promote class who discontinued their studies in the middle of the session may be considered and allowed as a

matter of merit, without subjecting the same to the process involved in the admission of applications for fresh admissions. The Rules merely provide that such students will be treated as fresh applicants and then may take their chance along with the other applicants only if the Head of the Department or the Dean of the Faculty concerned takes such notice. The students, from such category, are entitled to any special consideration other than in their case the students, concerned to, discharge such applications would be Head of the Department or the Dean concerned.

27 The fresh applicants as well as the applicants or students who are admitted through have all to be considered together by the same authority, for it is impossible to assume that members of the Rules provided that the fresh applicants and the students of students category would be dealt with with a matter of admission differently as one rule by the Director of the Administrative Commission and in the other by the Head of the Department or the Dean.

28 In any case the language of the 1984 Rules quoted above which alone in our opinion would govern the cases of the persons in question, is primary, clear and unequivocal. It appears that such students shall not be eligible for matriculation to the class in any subsequent session.

29 We observe that the students who, two persons are the rights to matriculation in the class in which they sought admission. That being so, their admissions were complete, valid and subsistent as law. The proposition that exercise of a right is a condition precedent for creating a precedent under Article 226 of the Constitution is a novel proposition requires strict proof. Thus in *D. K. Singh v. State of Karnataka* reported in (1977) 2 SCC 148 at page 153, 154 (1977) 2 SCC 154 at P. 157 their Lordships of the Supreme Court observed:

It is well settled that though Article 226 of the Constitution is a wide one, we do not describe the classes of persons entitled to apply thereunder the manner of the right is not to be determined solely by the constitutional provisions by the High Court under the said Article.

30 The persons are hence liable to be



be, and it appears the two others out of six appointed but because Government has not yet sanctioned the appointments, the result will be serious, on principle it applies to others institutions where appointments are not sanctioned but appointments are not sanctioned (interimary).

35. Applying the above-mentioned facts we find that in view of the clear legal position that the petitioners have not obtained the sanction and the fact that the petitioners have not been made the competent authority would be liable to issue a writ directing the Vice-Chancellor to comply with the principles of natural justice. No authority is competent to deprive the petitioners. Consequently we decide to interfere with the impugned action in the exercise of our discretionary power under Article 226 of the Constitution.

36. Counsel for the petitioners also submitted that the validity of public action has not been upheld in the light of reasons stated above and that we cannot reverse the impugned action as a general rule directed by the Vice-Chancellor in his order namely that the petitioners' resignation was void ab initio as there was no provision for their resignation.

37. We are not impressed by the above submission. It is not that we were sustaining the impugned order and ground not directed above. We are merely declining to interfere our discretion under Article 226 on a mere leadership ground namely that the petitioners did not have any right of resignation and the exercise of a legal right being a prerequisite for the exercise of discretion under Article 226 of the Constitution of India which is lacking in the present case we are not persuaded to exercise our discretionary power under Article 226 of the Constitution.

38. Learned counsel for the petitioners also submitted that the Vice-Chancellor is the Chief Executive Officer of the University and it is in the exercise of those powers the Acting Vice-Chancellor advised the petitioners the Vice-Chancellor could not act in appropriate discharge pursuant to the Acting Vice-Chancellor and finally the action taken pursuant to the order passed by the Vice-Chancellor.

39. We cannot accept the argument. While it is true that the Vice-Chancellor is the principal executive and academic Officer of the University, he cannot exercise power in a manner which is contrary to the provisions of the Act, Statutes and Ordinances. Further he cannot exercise powers which are specifically reserved to other authorities of the University. The power of appointment is vested under Section 26 of the Allahabad University Act and the petitioners have no authority or jurisdiction with the Vice-Chancellor that authority is the Vice-Chancellor's prerogative. Therefore, in which the petitioners sought admission, the Acting Vice-Chancellor could not directly exercise the powers of the petitioners.

40. Submission was placed by Jyoti K. P. Yadav, learned counsel for Allahabad University Section 26 of the Act, it was urged that even if there was any irregularity in the admission of the petitioners the same could result as a result of that petitioners.

41. We are unable to agree. Section 26 merely deals with certain specific instances or defects pertaining to procedure and not the power of the authority. Section 26 cannot, in our opinion, cure irregularity of act arising from a total lack of power.

42. Learned counsel for the petitioners also submitted that the petitioners having been once admitted and allowed to begin their first semester of the order passed by the Acting Vice-Chancellor or the Dean of the Faculty of the Department, the respondent University is estopped from cancelling the same.

43. The contention is entirely devoid of any merit. There exists no estoppel against a public authority which has been demonstrated that as a result of any act of any officer or authority of the University, the petitioners' position has in any way been altered in a manner within the limits which may not act a plea of estoppel. The resignation of the petitioners (and) who were not competent to do so. In those circumstances, the plea of estoppel is wholly inapplicable and must be rejected.

44. Learned counsel also submitted that the Vice-Chancellor is guilty of violating our discretionary power under Article 226 of the Constitution.





prohibition in the Act that at any stage after the finalisation of the proceedings under S. 4 the person cannot give his choice as to which land he would give, even after the vacant land designated by the competent authority. At the stage of S. 4 the facts are clearcut. The owner of the vacant land which would come within the purview of the Act has to be designated by the competent authority. It is only after such a designation that a person whose land is sought to be taken for the compulsory acquisition can give a proper choice as to which land he would like to give to the State Government under the Act and as to which land he would like to retain. In this view of the matter, the provisions of S. 4(1) cannot be interpreted to mean that a person whose vacant land is found to be in excess of the ceiling limit is prohibited from giving a choice except at the stage of S. 4(a) of the Act. AIR 1982 All 100 (all on). (Para 4)

**Case Related Chronological Para**  
AIR 1982 All 109

V. K. Gupta for Petitioner, Standing Counsel for Respondents.

**ORDER** — That in a petition under Art. 226 of the Constitution of India arising out of proceedings under the Urban Land Ceiling and Regulation Act, 1976 (hereinafter referred to as the Act) on 21.8.1984 the competent authority declared 104.63 square metres of land as surplus in the hands of the petitioner. The petitioner filed an appeal against the order before the District Judge, Alagiris. This was registered as Misc. Appeal No. 140 of 1984. In the appeal the petitioner did not challenge the order of the competent authority on merits by which the competent authority had declared 104.63 square metres of land as surplus but the petitioner submitted before the appellate court that the surplus land should not be taken from the land owner near Hoveli, Talukar but the same may be taken from the land of the petitioner situated at Gound, Trunk Road. The District Judge by order dt. 24.1.1985 dismissed the appeal with the observation that the question of choice would be considered at the time of proceedings under S. 4(a) of the Act. The petitioner has now challenged the order dt. 24.1.1985 by means of the present petition.

The petitioner and Shri L. V. Pandey, learned Standing Counsel on behalf of the respondents.

1. Learned counsel for the petitioner has urged that the District Judge has acted illegally and with material irregularity in the exercise of jurisdiction not modifying the order dt. 22.8.1984 and directing the petitioner to give his choice. Learned standing counsel, however, has further urged that the District Judge acted by the District Judge in error and it is not open to the petitioner to propose choice now after proceeding under S. 4 of the Act have been finalised by the competent authority. According to the learned Standing counsel the choice had to be given at the time when the petitioner filed under S. 4(b) of the Act and since choice had not been given in that manner, the petitioner cannot be permitted to exercise his choice at this stage now.

2. Section 4(1) of the Act provides that every person holding vacant land in excess of the ceiling limit in the commencement of the Act has to file a statement before the competent authority specifying the location, extent, value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building, whether or not with a dwelling use, then owned by him and also specifying the vacant lands within the ceiling limit which he desires to retain.

3. Learned standing counsel has laid great stress on the words "and also specifying the vacant lands within the ceiling limit which he desires to retain" used in S. 4(1) of the Act. The submission is that in view of the provision the choice should have been made by the person at the time of filing of the statement and not at any subsequent stage.

4. I do not agree with the submission made by the learned standing counsel. It is my stated reason that at the stage of filing of statement a person is a person to specify the vacant land within the ceiling limit which he desires to retain but there is no prohibition in the Act that at any stage after the finalisation of the proceedings under S. 4 of the Act, the person can exercise his choice as to which land he would give towards the vacant land designated by the competent authority. At the stage of S. 4 of the Act the facts are

2. I have heard the learned counsel for Shri. AL. L. J. (a) (b) (c)

deposited. The extent of the vacant land which would come within the purview of section 403, has to be determined by the competent authority. It is only after such a determination that a person whose land is sought to be taken by the competent authority can get a proper chance to be heard and he would take it up in the State Government under the Act and under which land is sought to be taken. In the view of the court, the provisions of S. 403 of the Act cannot be interpreted to require a person whose vacant lands found within a portion of the ceiling limit as prohibited from getting a chance except at the stage of S. 403 of the Act.

**F. In Benai Prasad v. Deewan Judge Alwarabad AIR 1962 AIR 100 a learned single Judge of the Court has quoted as follows:—**

There is nothing in the Act which can be said to lay down that if the estate is not registered under Sec. 401 then such estate regarding the vacant land to be attached and the vacant land to be surrendered cannot be retained at the subsequent stage when the stipulations in S. 403 of the Act themselves are laid.

**G. I respectfully agree with the opinion expressed by the learned single Judge in the case of Ben Prasad (supra).**

**H. In view of the above I am of the opinion that the petitioner has established prima facie after the extent of the land has been declared surplus to the benefit of the petitioner in the order passed under S. 403 of the Act.**

**I. So far as the impugned order is concerned, the learned District Judge has no objection if there will be any in the petitioner's inherent weaknesses in the state of proceedings under S. 403 of the Act. In coming to this, he said that, the very order by the District Judge is manifestly erroneous. The order of the District Judge consequently which has been impugned in the present petition has to be set aside.**

**J. I may however be observed here that in para 9 of the petition, the petitioner specifically alleged that the entire vacant land should be taken from the land of the petitioner under in para No. 307 or from para No. 200 under in village Panchsagar Gram, 181 Khasat Alwar. A counter affidavit of Jindoo Singh**

was submitted on behalf of the ending authority. In para 7 of the counter affidavit which is a reply to para 9 of the petition it has been contended that para Nos. 307 and 241 do not belong to the petitioner or that the land from these plots cannot be taken now as the vacant lands which has been declared surplus. In view of the admitted facts, we cannot say the competent authority while exercising its power under Sec. 9 of the Act by declaring a total exemption shall take into account the petitioner's choice and as such the land in para Nos. 307 and 241 cannot be village Panchsagar Gram IT is stated. Although it has not been shown that the entire vacant land of the petitioner shall be declared surplus and taken possession of by the endowment department.

**K. With the above observations the petition is allowed and the petitioner is directed to enter their own case.**

Order accordingly.

1968 AIR L. I 148

A. S. VADMA, J.

Smt. Hargovan Devi and others, Appellants  
v. Sengul and others, Respondents

First Appeal No. 95 of 1953 D.O. 218,  
1963 \*

**Hindu Succession Act (30 of 1956), S. 14—Application:—Gift of immovable property to widow.—Only the widow given.—Transfer therefore, of one piece of land by widow.—No proof that it was given to her as part of maintenance.—Sects 13 of S. 14 would apply.**

There is no presumption that every single property obtained by a Hindu widow by acquiescence or assent of her husband from her husband must be deemed to have been acquired by her for her maintenance. If the Will or bequest or a Gift or such possession a Hindu widow as property does not merely recognize her widow's right of a Hindu widow, then rule 32 of S. 14 would be

\*Agreed decision of J. P. Singh, 2nd Addl. Civil  
J. Alwar, D.O. 26-10-1971.

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granted in item 6, and alleges the value of the land to constitute all under sub-1 (1) of S. 14. But if the same is by way of mitigation of the pre-existing right, sub-1 (1) rather than sub-1 (2) of S. 14 will apply.

(Para 15, 20)

The deceased had transferred entire property both movable and immovable to his widow and the other legatee of the deceased husband were also under obligation to pay certain sum to the widow for her maintenance. The widow was generally able to make at the property legatee (husband) the deceased a small piece of land out of the said property to a tract.

Facts that the widow had no portion of maintenance. There was nothing in the will intended to suggest that the small piece of land which she transferred was given to her in lieu of maintenance. Thus sub-1 (2) of S. 14 would apply and the clause contained in the will pertaining a reserved matter in the property transferred to the widow would be fully operative. (Para 20 to 26)

Case	Ratio	Circumstantial Facts	
AIR 1979 SC 962			(1) 21
AIR 1977 SC 19			(2)
AIR 1977 SC 1944			(3)
AIR 1962 SC 271			(4)
AIR 1957 SC 424			(5)
AIR 1953 PC 261			(6)

G. P. Bhargava, for Appellants, Kishan Mahi Tripathi, for Respondents.

**JUDGMENT** — These two appeals arising out of the same suit are being disposed off by common judgments. First Appeal No. 39 of 1973 has been filed by some of the defendants who were named in the suit under defendant husband, while Form Appeal No. 44 of 1973 has been filed by the plaintiffs. The suit which was for possession over properties described in schedule A and B of the plaint and for declaration that the plaintiffs were not owners of possession of property No. 2 of Schedule C of the plaint was partly decreed and partly dismissed by the court below. The plaintiffs are aggrieved by the dismissal of part of their claims while the defendants are aggrieved by the decree of the court below by which relief has been granted to the plaintiffs

in respect of the properties specified in the decrees under challenge.

2. It will be convenient to set out separately the facts in respect of different properties involved in the suit which have been described under the three schedules of the plaint, namely A, B and C.

3. As regard to the property of schedule

A, the plaint case was that under the sale deed dated 24-4-1903, one Radha Ballabh purchased a part of a house as owner. Late 'Smt. Dabey' for a consideration of Rs. 1,000/.

The same day one Radha Ballabh and Smt. Uddin executed a deed of exchange whereunder a part of the property comprised in schedule B, Radha Ballabh transferred the property purchased by him to Radha Uddin and Smt. Uddin who in their own sold same to one Jagannath Jagannath Prasad under a sale deed dated 31-7-1904 for Rs. 1000 with stipulation for resale of the property to them within an agreed period. Thereafter Jagannath Prasad sold that property for Rs. 700/- to Smt. 'Narain Devi', wife of Radha Ballabh under a sale deed dated 25-2-16. This transaction was however a sham; the real owner being Radha Ballabh. Later a 'Dewan' (tax collector) took Radha Uddin and Smt. Uddin transferred their right of acquisition movable upon Jagannath Prasad in favour of Radha Ballabh. Subsequently, they executed a deed of declaration in favour of both Radha Ballabh and Smt. 'Narain Devi'. The remaining portion of the property of schedule A, was purchased by Smt. Uddin alone from one Kishan Lal through a sale deed dated 26-5-1905 which he executed in the name of Smt. Narain Devi as 'Dewan' for Radha Ballabh for Rs. 1,000/- only by means of a sale deed dated 2-7-1901. In this way Radha Ballabh became the owner of the property of schedule A.

4. As far as the property specified in schedule B goes, the plaint case was that the property (house) by house No. 1 situated in the place was purchased by Radha Ballabh and Jagannath on 21-2-1902 which was duly confirmed on 26-5-1902. Some dispute arose in regard to this property which led to Radha Ballabh transferring on 26-5-1902 against Radha Uddin and others which was

deceased on 29-3-1961. An appeal was preferred against the decree during a brief sale deed dated 17<sup>th</sup> 1962 was obtained by Radha Ballabh in the name of Smt. Narayan Devi as Beneficiary from late Haido Uthai and Satam A. Ina in respect of a Lockers which was also included in schedule B. Subsequently on 27-3-63 Radha Ballabh and Satam Uthai entered into a compromise with respect to the property as a result of which a sale certificate dated 24-9-1967 was issued in the name of Smt. Narayan Devi as Beneficiary for Radha Ballabh. Another sale deed dated 14-9-1968 was obtained by Radha Ballabh in the name of her wife Smt. Narayan Devi as Beneficiary for Radha Ballabh from late Radha Uthai alias Chidambay and Madha widow of Satam Uthai in respect of the lockers was included in the property of schedule B. This is how Radha Ballabh became the exclusive owner of the immo property specified in Schedule B.

4. Regarding item No 2 of Schedule C, the simple case of the plaintiffs was that it was purchased by Radha Ballabh from one Chandra Das and the name of Smt. Narayan Devi was added only, as a Beneficiary for her.

5. In respect of all these properties deceased under different schedules A, B and C the plaintiffs case is that Smt. Narayan Devi was only a Beneficiary; the real owner being Radha Ballabh who remained in possession as tenant, deceased till his death on 14-6-64. On 21-9-1963 Radha Ballabh was also required to convey the property as an absolute property to his wife Smt. Narayan Devi the grant for only a life estate therein. It was also pleaded that the will set forth any right to claim the property. It was also pleaded that after the death of Smt. Narayan Devi the properties belonging to Radha Ballabh would go to his heirs and her sons who were assigned as defendants 15 to 17. Then Smt. Narayan Devi had no right to claim any part of the disputed property. The plaintiffs had a vested right in the suit as provided under the will. Smt. Narayan Devi who was usually assigned as defendant No 1 in the suit also died during the pendency of the suit whereafter the plaintiffs became full owners of the properties specified in schedules A, B and C. However, late Narayan Devi intentionally and under the influence of some unscrupulous persons transferred possession of the property as suit to

different persons. This by and large dated 21-3-1962 the title of property of schedule A by the defendants issued and transferred a registered deed 14-145 regarding the property of schedule B in favour of defendants 4 and 14 jointly. Smt. Narayan Devi then and San Sarpal Malani appearing defendants Nos 3 to 12 respectively stated for the convenience of a simple and understandable. The sale deed, and registered deed and will of the late and one not found the plaintiffs when became full owners of the disputed properties in terms of the will dated 24-9-1963 made by Radha Ballabh. In this case the plaintiffs became entitled to recover possession over the properties of schedules A and B and as a declaration of their title over the property mentioned in item No 2 of schedule C.

7. The suit was intervened by the defendants moved to as well as defendants Nos 4, 5 and 14 out of the defendants third set. The defence of the defendants second set, wherein Smt. Narayan Devi was the full owner of the property of schedule A, which was in the shape of a vacant plot only and that the full totally transferred the same to their father through the sale deed dated 23-1-1962. The said property was purchased by her out of her own funds and not as a Beneficiary for Radha Ballabh. These defendants also denied the existence of the will and said that the same was a forgery, and forged documents conferring no right, title or interest on the plaintiffs. They also pleaded that the suit was barred by estoppel and acquiescence.

8. The defence of the defendants 4, 5 and 14 (the appellants of appeal No. 10 of 1972) was that the will set up by the plaintiffs was a forged and fraudulent document and was not executed by Radha Ballabh, being only a witness a voluntary or common act of Radha Ballabh, who was in the relevant time too old and weak in mind and body, suffering from prolonged illness to be able to understand the implications of what he was doing. The defendants also stated that Radha Ballabh had purchased the property of schedule A. According to them Smt. Narayan Devi was a full and rightful owner of all the disputed properties and she had an absolute disposing power over the same. The said deed in question was hence perfectly valid and effective in law. Further the plaintiffs were

tally aware of the execution of the will dated 21-01-1973 and had not participated in the execution having custody of the temple and Ottamabala which Devanant had completed as per para No. 10 (iii). There was, therefore, fraud by abetted and acquiescence.

2. On the pleadings of the parties the following issues were framed by the court below:

1. Whether Radha Ballabh deceased was the owner of the properties situated at schedule A, B and C of the plaint?

2. Whether Radha Ballabh deceased executed the will dated 21-9-1963 relied upon by the plaintiffs or not in effect?

3. Whether Radha Ballabh purchased any property in degree Benam in the name of her wife Smt. Harman Devi?

4. Whether Smt. Harman Devi purchased any real property Benam in the name of her husband Radha Ballabh?

5. Is the suit barred by prescription?

6. Whether the defendant No. 8 had only a life estate in the properties in suit and was not competent to transfer any interest in the properties in suit? If so, in effect?

7. Is the suit undervalued and the court fees paid insufficient?

8. Is the suit barred by section 41 of the Transfer of Property Act?

9. Is the suit barred by estoppel and acquiescence alleged?

10. Whether the rule died entered by Smt. Harman Devi in favour of defendants Nos. 2 and 3 in respect of the property of schedule A, is for legal necessity?

11. To what relief, if any, are the plaintiffs entitled?

12. Whether the defendant No. 10 has no concern with the property in suit, and he has been unnecessarily impleaded, and is entitled to special costs under section 25-A of the C.P.C.?

13. Whether the plaintiffs are not entitled to the relief asked for as they have given in para No 20 of the Affidavit No. 5 of defendants 8 and 14 page No. 23(a)?

14. On account of the issues, it proved to involve the merits of the two appeals.

15. I settled the order up First Appeal No. 49 of 1973 filed in the abovesaid Court, and thereby, through its managing trustee and Mahant, Ram Chandra another trustee, who are named under the signatures of the defendants stand as, Sri G. P. Sanyal, appearing for the appellants confined his intervention to that part of the property of Schedule-B in the plaint in regard to which Smt. Harman Devi had executed a will and for which the court below has granted a decree for possession to the plaintiff respondents. The property has been indicated by letters A, H, C, K, L, Z, H, V, T, G, R, P, B in the plaint map No. 1. The conclusions on the various issues relevant to this appeal as reached by the court below are as follows. Radha Ballabh did execute the will dated 21-9-63 relied upon by the plaintiffs and the abetment in the contrary made by the appellants was wrong and has remained unestablished. The suit is not barred by estoppel or acquiescence. The plaintiffs are not to be concerned with such extent, the lot of estoppel or acquiescence. The property marked by letters A, H, C, K, L, Z, H, V, T, G, R, P, B in the plaint map No. 1 belonged exclusively and absolutely to Radha Ballabh and the transactions respecting matters standing in the name of Smt. Harman Devi were Benam in character, the real owner being her husband, namely Radha Ballabh. The suit of the property of Schedule B marked by letters H, S, P, G (though not relevant for this appeal, has been held to belong to Smt. Harman Devi.

16. Sri G. P. Sanyal, learned counsel for the appellants, did not challenge any of the abovesaid conclusions of law reached by the court below against the appellants in regard to the real property. Indeed, he admitted no questions therein, but however made two fresh submissions, which shall be dealt with below.

17. The first and indeed the main argument of Sri G. P. Sanyal was that in view of Section 64(a) of the Hindu Succession Act (hereinafter referred to as the Act) Smt. Harman Devi became absolute owner of all the properties bequeathed to her by Radha Ballabh under the abovesaid will notwithstanding the same being impeded by the trustee providing that she will have only a life interest in the properties, whether she had not have any right of alienation thereof. In support

of the testamentary counsel placed reliance on the following decisions:

- 1. AIR 1971 SC 1574 *Mahabogya Talukdars*
- 2. *Sarda Bhabhi*, 3 AIR 1979 SC 60 (Bh. Vag).
- 3. *Thakurchari Chandra Bhai*.

18. *Mahabogya Talukdars* (Sri Bhagwan) estimated that she was Hindu widow Sri Narayan Deva had a pre-existing right of maintenance in regard to the property in question and correspondingly in terms of Section 14(1) of the Hindu Succession Act she became absolute owner thereof notwithstanding the interim decree as her right of enjoyment by Radha Bhabhi in the will. It was urged that in the abovesaid decisions the Supreme Court has ruled that a Hindu widow has a pre-existing right of maintenance and if a compromise covered certain properties unrelated to her sole condition placed in a Will, Deva or other instrument purporting to restrict her rights shall have no effect in the application of Section 14(1) of the abovesaid Act.

19. Having heard learned counsel for the parties, and having gone to the matter a careful consideration I was unable to agree. The argument though simple and attractive on its face does not bear a close scrutiny. It proceeds on three factual assumptions which are not correct in the present case.

20. As the matter is now to be considered that the plea raised by Sri Bhagwan was not dismissed in any form whatever before the court below. Thus the plea and compromise raised was whether the property was acquired by Sri Narayan Deva from her own funds or she was only a beneficiary for Radha Bhabhi. The plea that she had acquired the property in lieu of maintenance was not even remotely hinted at before the court below. And as I shall presently demonstrate, the plea raised by Sri Bhagwan is not a consequence of law. The compromise proceeds on a wide assumption that the particular property was given to Sri Narayan Deva by Radha Bhabhi in lieu of maintenance. However, even so, meets the argument cannot be accepted.

21. In order to appreciate the contents of the learned counsel it will be convenient to have a look at Section 14 of the Hindu Succession Act. It provides:

14. (1) Any property possessed by a Hindu

widow, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation:—In this sub-section the property includes both movable and immovable property acquired by a Hindu widow by inheritance or devise or as a partition or sales of maintenance or annuity of maintenance or by gift from any person whether a relative or not, before or after her marriage or by her own skill or exertion or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as transferee immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will, or other instrument or the decree, order or award prescribe a restricted estate in such property.

This section has been subject of an exhaustive consideration by their Lordships of the Supreme Court in two decisions cited by Sri Bhagwan. In both these decisions, the question raised was whether a provision in a compromise decree purporting to restrict the right of enjoyment of certain properties given to a Hindu widow in lieu of her maintenance would attract sub-section (2) of Section 14 so as to prevent the property from coming in the widow absolutely in terms of sub-section (1) of Section 14. As a survey of the case law on the subject, both textual as well as judicial pronouncements, their Lordships ruled that there the decree or instrument restricting the right of enjoyment, Hindu widow of the properties given to her in lieu of maintenance directly comprises a pre-existing right vesting in the widow sub-section (1) of Section 14 shall have no application and thus the appropriate provision applying to such cases would be section 14(2). It is noteworthy that in both these cases up to the immovable properties had been allotted to a Hindu widow in lieu of maintenance under a compromise decree which contained a clause confining only a life estate to the widow. Their Lordships observed that under the Statute Hindu law the widow had an undivided right of

maintenance for the satisfaction of which the properties in question were liable and if in satisfaction of her claim for maintenance she was alienated those properties, sub-section (2) of Section 14 would not validly subvert all the full estate which was involved on her to finance.

12. In order to establish the position under sub-section (1) of Section 14 under general aspect of the right namely the claim of a Hindu widow for maintenance and its enforceability against joint Hindu family property or the property of her husband. In the case reported in AIR 1977 SC 1944 the Lordships in paragraph 1 observed after an extensive analysis of the text and authorities on the subject that a Hindu widow can for the purpose of maintenance follow her joint Hindu family property, i.e. the Hindu family one who takes it that the Lordships happened to add that this right of maintenance is not a right to a property but it is a right against the property of her husband. The Lordships cited the law thus in para 198 to 199:

It is therefore clear that under the Hindu Law a widow has a right to be maintained out of joint family property and this right would ripen into a charge if the widow takes the necessary steps for having her maintenance ascertained and specifically charged in the joint family property, and even if she specifically charges a demand, this right would be enforceable against joint family property in the hands of a volunteer or a purchaser taking a full notice of her claim. The right of the widow to be maintained out of estate not a full estate, since it does not give her any interest in the joint family property but it is enforceable against it. It has added the joint property. Therefore, when specific property is allotted to the widow in lieu of her claim for maintenance the alienation would be in satisfaction of her part of her, namely the right to be maintained out of the joint family property. It would not be a grant for the first time widow any pre-existing right in the widow. The widow would be getting the property in virtue of her pre-existing right, the alienation giving the property being totally a document effectuating such pre-existing right and not making a grant of the property to her

for the first time a strong pre-existing right or title.

13. After making the aforesaid observations the Lordships held that when specific property is allotted to the widow in lieu of her claim for maintenance the alienation would be in satisfaction of her right to be maintained out of the joint Hindu family property. It would neither be a grant for the first time widow any pre-existing right in the widow.

14. Having stated the law thus and taking note of the fact that the property in question happened specifically allotted to the widow in satisfaction of her claim for maintenance. The Lordships held that the compromise decree under which she was allowed that property conferred no fresh rights on the widow. Consequently, it must follow that the decree purporting to remove her right consistently with the Section law could not validly attract sub-section (2) of Section 14. Explanation to sub-section (1) of Section 14 undoubtedly covered such cases in plain terms.

15. The same view was reiterated in the other case viz. AIR 1977 SC 1960 *Sh. Yogan & Shaloothas Chaudhary*. There also the position was that under a compromise decree specific properties were allotted to a Hindu widow in satisfaction of her claim for maintenance. The decree however provided that the widow shall have a only life estate in the property. The Supreme Court held that sub-section (2) of Section 14 was not attracted as the decree merely recognised a pre-existing right of Hindu widow. Explanation to section 14(1) was applicable in cases in such a case. The property, had not been conferred for the first time on the widow under the decree. It was in that factual background that their Lordships rejected the claim of the plaintiff founded on sub-section (2) of Section 14.

16. The right to maintenance of a Hindu widow recognised by the Supreme Court in its two decisions cited above was in the context of the Section law. However, under the Hindu Adoptions and Maintenance Act also the position is substantially the same. Indeed, it seems statutory incorporation has been given to the existing law as regards the claim for maintenance of Hindu widows and their dependents of a Hindu. Thus Section 19



provides that a Hindu wife shall be entitled to be maintained by her husband or his husband by her. Her failure to do so from the date of her husband's death. Section 24 declares the test of adequacy of a deceased Hindu's estate to maintain his widow. Then follows Section 25 which provides that the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased. Section 25B likewise provides:

"Where a dependent has not claimed by testamentary or intestate succession, any claim in the estate of a Hindu dying after the commencement of this Act, the dependent shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate."

23 The provision is significant in the context of the present case. Section 17 states:

"A dependent claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof unless one has been created by the will of the deceased or a decree of court, by agreement between the dependent and the owner of the estate in person or otherwise."

24 The section reiterates the rule established by a long line of decisions under the Mitakshara law as previously applied, which was that a claim of a Hindu widow for maintenance is not a charge on the estate of her deceased husband and is a debt and charged upon the estate. The claim is of an independent character and unless made a charge upon the property is enforceable only like any other ordinary mortgage of which no charge exists.

25 It would thus seem that in the final analysis the vital question remains for the application of Section 14 would be whether the Will or Intestance or a Decree which provides a retained estate in such property merely designates a preexisting right of a Hindu widow. If the answer is in the negative (26) (27) of S. 14 would be tantamount to treat and deprive the widow of the benefit contemplated under S. 14(a) of the Act of treating the answer with the affirmative sub-section (28) rather than subsection (2) will apply.

26 Turning to the facts of the present case I find that it has not been established the appropriate land mentioned in the Will was given to Sri. Narayan Dew for her maintenance. Under the Will Radha Bai's husband had bequeathed considerable properties to Sri. Narayan Dew. The properties included agricultural holdings as well as shop and open pieces of land. In one of the retained of husband's Radha Bai's husband was holding with Sri. Narayan Dew. The other considerable properties were sold by the plaintiff as Rs. 40,000 out of which the value of the deceased property was shown in the plan as Rs. 2,000. In G. P. Bhargava did not question the correctness of the valuation of the properties given by the plaintiff in the case.

27 Besides immovable properties Sri. Narayan Dew had bequeathed movable assets as well. The evidence indicates that Sri. Radha Bai's husband was a person of substantial means. So it may be safely assumed that Sri. Narayan Dew had been amply provided by Radha Bai's husband in the shape of both immovable properties as well as movable assets, even without the aid of the piece of land which Sri. Narayan Dew chose to transfer to the defendant appellant under the Will deed. Not only that Radha Bai's husband had amply provided the other legacies to pay certain sums of money every month to Sri. Narayan Dew for her maintenance. Furthermore, Sri. Narayan Dew had sold a part of the properties (including her under the will) which further goes to prove that Sri. Narayan Dew had no problem of maintenance.

28 Interestingly, also there is nothing in the Will of Radha Bai's husband which might suggest that the deceased property intended Sri. Narayan Dew had transferred to the defendant respondent trust was given to her in lieu of maintenance.

29 There is no presumption that every single property obtained by a Hindu widow by testamentary or intestate succession from her husband must be deemed to have been acquired by her for her maintenance. As has been laid down in the decisions cited above, as well as the provisions of the Hindu Adoptions and Maintenance Act, she had a Hindu's right to proceed against the property left by Radha Bai's husband in satisfaction of her

claim for maintenance if she was unable to maintain herself from other properties and assets. But from the facts circumstances that she could legally proceed against the property in satisfaction of her claim, it does not follow that the property must be deemed to have been acquired by her in lieu of maintenance (within the meaning of *Shastri v. Shastri*, AIR 1948 AC 404) or by her husband Mr. Sarappa Shastri as the deceased reported in AIR 1957 SC 494. The claim for maintenance is not an estoppel, but is only against her, i.e. a right against the property.

10. My conclusion therefore is that the property in dispute cannot be said to have been acquired by Mrs. Narasimha Deva in lieu of her maintenance. The two Supreme Court decisions cited by Mr. G. P. Shastri are hence inapplicable for the simple reason that in both these cases specific immovable properties had been allotted to the widow expressly in satisfaction of her claim for maintenance. That being so, section 14(b) clearly applies and the claim commensurate with the property is recognised as a right against the property bequeathed to her. Narasimha Deva must be held to be fully entitled to the sum.

11. The second submission of the learned counsel for the appellants in this appeal was that even if Mrs. Narasimha Deva had a limited right in the property inasmuch as the deceased made by her will a bequest of the sum to her for the special benefit of her deceased husband, it must be upheld as unreasonable, various uses and purposes. In support learned counsel raised reliance on two decisions, namely, AIR 1952 PC 513 and AIR 1957 SC 494 in which it has been held that a Hindu widow is not clothed with a claim of a reasonable portion of the estate of her deceased husband for pious purposes or for objects which conflict with the plan of the deceased husband's will. It was urged that the transfer was made commensurate with the wishes of Mr. Radha Shastri himself. This being so the transfer must be upheld, even if legally, Mrs. Narasimha Deva was not a full owner of the estate of her deceased husband.

12. This point again was not raised in any form before the court below. It is obvious that it is not a pure question of law. The argument of the learned counsel is based on

an uncontroverted assumption that the bequest was made for the special benefit of her deceased husband, or in fulfilment of his wishes. If the appellants had raised the issue before the court below, the other side would have had the burden of establishing whether or not the transfer made by Mrs. Narasimha Deva was for the special benefit of Mr. Radha Shastri or her own. Learned counsel however placed reliance on the records contained in the will deed dated 2/5/1954 Page No. 165 Kap to last, Marumittai, in which it is mentioned that her husband wanted to construct a Shastri Math. From the record Mr. Shastri wanted the court to conclude that the transfer in favour of the Trust must be deemed to have been made for the special benefit of Mr. Radha Shastri.

13. I am unable to agree. It will be open to the respondent to give a finding on the issue of fact on the mere records of the Shastri Math bequeathed in favour of some third party in the absence of any issue on the point. Further, it may be assumed that if the test from the will of Radha Shastri that was made by her husband making a provision for it in the Will executed by him only a year or so before 1954, should it not incline to sustain the argument on this stage.

14. Further it is also doubtful whether a Hindu widow who possesses only a life estate will enjoy the Shastri Math. Formerly recognised in the past and subject to certain provisions. For under the Hindu Succession Act radical changes have been introduced conferring on Hindu females absolute rights as well as rights of inheritance equal in point to that of a son. Section 4 of the Hindu Succession Act provides that any rule, rule of interpretation of Hindu Law, custom or usage, which is inconsistent with the provisions of the Act shall cease to have effect with respect to any matter to which it applies. It is made in the Act in which it is inconsistent with any provision contained in the Act. A claim of the nature advanced by Mr. Shastri prima facie seems to be inconsistent with subsection (2) of Section 4 of the Act. However, I am expressing no concluded opinion on the provisions placed by Mr. Shastri in relation to be argued on the facts given above.

18. Lastly, I may add that although Sir Narayan did not challenge the finding of the court below, in any of the issues framed against the defendant appellants, I note through the evidence as to which itself as to whether the conditions attached to the court below such as Kadha Bahadik had distinguished the 14th dated 21-9-1952 and that the suit was not barred by estoppel and acquiescence or Section 11 of the Transfer of Property Act were agreed in fact, and on a careful consideration of the same. That myself a stipulating evidence must follow on all these findings.

19. The result of the foregoing discussion therefore in the First Appeal No. 44 of 1952 has no more and is liable to be dismissed.

20. I now turn to First Appeal No. 44 of 1952. In *S. V. Tirupada* learned counsel for the appellants submitted that the court below committed an error in not holding that the entire properties detailed in schedules A, B and C of the plaint were purchased by Kadha Bahadik because in the name of late Narayan Deva. It was urged that on a proper appreciation of the evidence presented a case established beyond doubt that every single property purchased by late Narayan Deva was belonged to Kadha Bahadik and that late Narayan Deva was the agent/representative of Kadha Bahadik. I am unable to agree. In my opinion the finding of the court below as regard to purchase of the properties mentioned in different schedules of the plaint for sale to out of the plaintiff appellants has been damaged seriously.

21. For convenience sake I shall take up the properties of different schedules separately and consider whether the properties purchased in the name of late Narayan Deva in regard to which the late Kadha Bahadik deceased was found to be real owner being Kadha Bahadik.

22. The property of schedule A, situate at Balakrishna Subrahmany, belonged originally to late Lala Prasad. Deceased from whom Kadha Bahadik purchased the same under a sale deed dated 20-4-1952. The same day Kadha Bahadik and one Basu Uddin and Seng Uddin executed a deed of mortgage under which the property of schedule A was given to Basu Uddin and Seng Uddin in exchange and for some portion of the property comprising part of the

property of schedule B. On 31-7-1954 Basu Uddin and Seng Uddin transferred the property which they had got in exchange from Kadha Bahadik by means of a sale deed dated 31-7-1954 to one Jagannath Prasad with a stipulation therein for repurchase of the same by the vendors. Thereafter Jagannath Prasad sold the property to the husband of late Narayan Deva through a sale deed dated 10-5-1956 subject to the right of repurchase vesting in Basu Uddin and Seng Uddin. Meanwhile before transferring the property to Jagannath Basu Uddin and Seng Uddin had partitioned the property half and half, the northern half going to one Uddin and southern half to Basu Uddin. Subsequently both Basu Uddin and Seng Uddin moved into separate houses separately with Kadha Bahadik and thereafter with both Kadha Bahadik and late Narayan Deva in respect of their respective portions. Then on 20-2-1958 Seng Uddin executed a deed of transfer (Ex. 1) in favour of Kadha Bahadik in respect of his northern half portion, while the same day Basu Uddin, exercising the right of repurchase deceased a sale deed in respect of his southern portion. Both these transactions were however superseded by something which is of some significance for the disposal of the same. On 25-1-1959 both Kadha Bahadik and late Narayan Deva jointly executed a deed of sale (Ex. 2) in favour of Seng Uddin in respect of the southern half portion of the property. Seng Uddin similarly executed a deed of transfer (Ex. A-12) in favour of late Basu Uddin and late Narayan Deva in respect of his northern portion. There was no transaction thereafter with respect to the northern portion of the property. However Basu Uddin transferred his southern half portion again to Kadha Bahadik by a sale deed dated 20-10-1959 under a similar right of repurchase. Subsequently on 4-7-1960 he obtained a remainder of the said property from Kadha Bahadik finally by a sale deed dated 1-8-1961. (Ex. A-13) Basu Uddin holds a southern portion to late Narayan Deva.

23. From a mass of facts set out above it is clear that the ownership of both the northern and southern portions of the property of schedule A finally came to be vested in late Narayan Deva, though initially the property had been purchased by Kadha Bahadik. The sale in the southern portion came to vest in

Smt. Narayan Devi under the sale deed dated 23.3.56 (Ex. A-105) executed by Jagannath Chaganti? Petitioner failed to show any person on 23.3.56 under the sale deed (Ex. A-105) executed in her favour by Ram Laksh.

41 It is undisputed that the owner of parcel shall derive proprietary through standing in the name of Smt. Narayan Devi under Jagannath's sale deed, although it belonged to Radha Balakrishna and that Smt. Narayan Devi was only a beneficiary for the former. The law on the subject has been judicially and conclusively by several pronouncements of the Supreme Court and of the High Court but it is difficult to follow as refer only to one decision reported in AIR 1966 HC 271. In this case that Lordships of the Supreme Court said that the issue of proof that a transaction is bona fide on the part which runs up the case of innocent character of the transaction. Another principle laid is that even if it is found that the mistake here for a transaction of sub-mortgage was by the husband in the name of his wife was proved by the former, the same is not conclusive to establish that the transaction was bona fide.

42 In the present case however as I shall presently demonstrate the plaintiffs have failed to prove by any cogent or corroborative evidence that the consideration for the transaction of sale was provided by Radha Balakrishna and not by Smt. Narayan Devi herself. In any case the conduct of the Radha Balakrishna as also the surrounding circumstances with regard to the property completely negates the possibility that the property was mortgaged to the former in the name of Smt. Narayan Devi. On the contrary the evidence submitted that Radha Balakrishna himself intended that Smt. Narayan Devi should be the real owner of the property.

43 Taking up the question of the source of money Ex. 1 told that there is no independent or reliable evidence as to that the money was provided by Radha Balakrishna and not by Smt. Narayan Devi, herself. It is apparent that there is no presumption that the wife dispossessing is the husband Smt. Narayan Devi must have been provided out of the funds provided by Radha Balakrishna. On the part of the case, the only testimony is that of Ram Laksh (P.W. 3) one of the plaintiffs, himself. Apart from the one highly interested testimony, there is no other evidence worthy

of reliance which might affirmatively prove that the consideration was provided by Radha Balakrishna. Ram Laksh (P.W. 3) affirmatively said that Radha Balakrishna had told him on the previous witness stand, that Mani Lal had told the sister of the wife death that the name of Smt. Narayan Devi was being mentioned in the sale deed only for her convenience (Ex. 1). Significantly, however, none of the previous witness provided Radha Balakrishna is alleged to have owned the reproduced material of the plaintiffs P.W. 1 Smt. Narayan no doubt positively stated that Radha Balakrishna was a man of some means but he was unable to recall to say anything about the financial situation of Smt. Narayan Devi. P.W. 3 Dhanraj Das was also unable to say anything about the amount or the financial position of Smt. Narayan. He candidly admitted that he was wholly unable to say whether Smt. Narayan Devi was raising money by mortgaging a riding garment. He was also unable to say whether Smt. Narayan Devi purchased any property from the consideration. He finally admitted that he knew nothing about the financial status of Smt. Narayan Devi, likewise the other witnesses of the plaintiffs were also unable to recall to support the plaintiffs claim that the consideration was provided by Radha Balakrishna.

44 Learned counsel however took us through the statements of defendants witnesses and submitted that they have completely failed to prove that Smt. Narayan Devi had any substantial or independent source of income as was unable her to purchase the property. In this connection, it is sufficient to say that assuming that the defendants witnesses have not been able to prove that Smt. Narayan Devi had any regular source of income, that would not be of any assistance to the plaintiffs in the case that the transaction was bona fide, on the plaintiffs and they cannot claim a decree on the basis of any alleged weakness in the case of the defendants.

45 From a consideration of the evidence on record I have no hesitation in holding, in agreement with the court below, that the plaintiffs have miserably failed to prove that the consideration for the transaction is question was provided by Radha Balakrishna and that Smt. Narayan Devi was not possessed of sufficient means as enable her to purchase the

properties from her own independent funds. I may add, here that the transaction of sale of 1905 is *absent* in fact. Narayani Devi was only for the 700. The sale consideration for the purchase of the property from Basu Uddin was also of the same order. These amounts were by no means very substantial or such as to be a badge of the status of Son. Narayani Devi could not have possibly paid from out of her own personal savings or resources.

46. The governing events also negative the charge that the transaction of sale is forged by Son. Narayani Devi evidenced by the sale deed dated 25-5-54 (Ex. A 148) and dated 25-5-54 (Ex. A 174) were *Baran*. Forty three was no reason why the property which was originally purchased in the name of Radha Balabai should be alleged to be subsequently purchased in the name of Son. Narayani Devi. No satisfactory reason has been offered why the property could not be purchased from Jagannath/Jagannath? in Radha Balabai's own name. Further after the sale deed and the deed of purchase dated 25-5-54 (Ex. 12 and 13) a suit mutually filed solely in the name of Radha Balabai these documents were registered on 25-5-54 (Ex. 24 and Ex. A 121) in the name of both Radha Balabai and Son. Narayani Devi. If Radha Balabai was the real owner of these properties, both deeds of sale and no tender executed in the name of both herself and Son. Narayani Devi seemed superfluous. To my mind these transactions clearly indicate that even Basu Uddin and Son. Uddin/Anugrad of purchase (Ex. A 128) states that it was executed at the instance of Son. Narayani Devi which shows that she was asserting ownership rights.

47. Thus the governing transactions clearly suggest that Radha Balabai as well as Basu Uddin and Son. Uddin all treated Son. Narayani Devi as the real owner of the property. There is no other explanation for various governing evidence of deeds of purchase and sale in which the name of Son. Narayani Devi figured.

48. Learned counsel for the plaintiff(s) seek some support from the description of the northern boundary in the sale deed dated 25-5-54 (Ex. 24) which records that the property is to the north of the building being so belonged to Radha Balabai. Learned counsel contended

that this was an admission by Son. Narayani Devi that Radha Balabai was the owner of the northern portion of the property. Learned counsel argues. The court below has rightly said that Radha Balabai was taking active part in various transactions and it is possible that in the sale deed (Ex. 24) the northern boundary was wrongly mentioned as belonging to Radha Balabai and also other facts understood by Son. Narayani Devi. In my view the so-called admission is not sufficient to vitiate the rest of the evidence on the record. It only fully supports the case that Son. Narayani Devi was not the Beneficiary of Radha Balabai.

49. Learned counsel for the plaintiff(s) had stress on the circumstance that Son. Narayani Devi though arrayed as a defendant did not file any written statement and deny the admissions made in the plaint as well as the statements made under Order 13. In my opinion not much weight can be attached to the omission of Son. Narayani Devi to file a written statement. Her omission cannot be used as an admission against the surviving defendants.

50. On a consideration of the entire evidence in record therefore I find myself in complete agreement with the court below that the plaintiff(s) have failed to prove their case that the properties of Schedule A really belonged to Radha Balabai and Son. Narayani Devi were mere Beneficiary for her.

51. This brings me to the property of Schedule B managed by Son. RSTU in regard to which the plaintiff's case had been dismissed by the court below. Here also the position is that under a sale deed dated 25-5-54 (Ex. 24) Son. Narayani Devi sold the property for Rs. 1,000 to Son. Narayani Devi. There is no other transaction in regard to this property which might support the plaintiff's case that Son. Narayani Devi was Beneficiary for Radha Balabai. The evidence on record does not indicate that Radha Balabai was present at the time of the management of the sale deed. The evidence led by the plaintiff with regard to the source from which the consideration for the transaction came and the same is contrary to that discussed by me while dealing with the property of Schedule A. Here also I find that there is no independent and reliable evidence which might support the claim of the plaintiff(s).

that the real owner was Radha Balaiah and that Smt. Narain Devi was mere Nominee.

21. So far as the property mentioned in para No. 3 of Schedule C is concerned, the position is that the house was purchased from Damodar Das through sale deed dated 7-4-65 for Rs. 5000/- jointly in the name of Sri Radha Balaiah and Smt. Narain Devi. The court below has discussed the evidence in regard to this property at length and has come to the conclusion that the property belonged both to Radha Balaiah and Smt. Narain Devi in equal shares. I am in full agreement with the conclusions made by the court below. I have gone through the statements of P.W. 1 Smt. Narain and P.W. 2 Damodar Das which my attention was provided by the learned counsel for the plaintiff. But I am unable to place much reliance on their testimony. P.W. 1 Smt. Narain simply says that Radha Balaiah was employed in the concern called New Popular Cycle Works, Agra, and that he had Rs. 15000/- deposited in his name in the bank at that time. He further says that Radha Balaiah had withdrawn Rs. 5000/- out of this amount. However, there is no corroborative bank account in support of the allegation. Secondly, the plaintiffs are also the employees of the concern and consequently the testimony of P.W. 1 cannot be said to be securely relied on as independent. Further there is no reliable evidence to establish that the sum of Rs. 5000/- alleged to have been withdrawn by Radha Balaiah was used in the purchase of the house.

22. P.W. 2 Damodar Das also does not inspire much confidence and he seems to have appeared to a witness only to oblige the plaintiff. He simply says that Radha Balaiah had told him that the name of Smt. Narain Devi was being included with sale deed only for tax consideration. There was however no concern for Radha Balaiah to tell this to his co-Damodar Das. The court below was hence right in not placing reliance on the plaintiff's witnesses in regard to the property of Schedule C also. According to the records in the sale deed Radha Balaiah and Smt. Narain Devi, both were to be the owners of the property in equal shares. The plaintiff's case of bona fide purchase of the immovable was twice rightly rejected in regard to the name of the property also.

23. In the result both the appeals fail and are dismissed. There will, however, be no order as to costs in either of these two appeals.

Appeals dismissed.

FOR ALL J. J. 197

S. K. CHAKRAJYI

Ravi Narain, Petitioner v. Board of Revenue U.P. as Appellate and others Respondents.

Civil Misc. Writ Pet. No. 524 of 1978 D. 25-8-1980.

(A) Evidence Act (1 of 1872), ss. 17, 18 — Admissions — Admission of party is not conclusive proof of the matter admitted.

Sections 17 and 18 make it clear that an admission is not conclusive proof of the matter admitted. An admission merely requires an admission in the Court on some fact or facts in issue. Therefore, before the Court draws any inference from a party making an admission, it becomes its duty to scrutinise the evidence in and out. It should examine the deposition while hog on the point in issue and the facts or allegations as admitted or conceded parts of the alleged admission. The admission has to be a clear one and therefore the admission must be an unequivocal and comprehensive one. (Para 19)

(B) U.P. Zamindari Abolition and Land Reforms Act (1 of 1951), s. 229-B — Sub for declaration of Abolition rights under s. 229-B — Plaintiff claiming to be a co-tenant — Finding on question of status of plaintiff from the property in dispute — Board of Revenue not referring to any other material except the alleged witness reporting ownership of property by the plaintiff — Matter remanded to appropriate authority for considering other material on record having bearing on said question. (Para 13, 15)

Case Reported Chronological Para  
AIR 1980 AC 405 10  
AIR 1977 AL 1176 11  
AIR 1978 PC 385 12

R. N. Singh for Petitioner; Ptarmigan Singh and Ben Prasad for Respondents.

SC/11/10848/1979

**ORDER.**— This is a plaintiff's case arising out of a suit for declaration under § 75-B of the U. P. Zamindari Abolition and Land Reforms Act (hereinafter cited as the Act). The subject matter of the controversy, according to the pleadings at which the parties were taken to be in agreement, along with respondents 4, 5 and 6, the plaintiff's case is that the land in suit is a joint family property, and after the date of issuing the decree, between the Board of Revenue of the State and the defendant, he and the defendant Ramji (respondent 4) are co-owners. Amongst other pleas, the defendant makes various statements (pleaded) but the suit was barred by limitation. The defendant also pleaded that the plaintiff has surrendered his rights in the land in favour and in consideration of the defendant's wife so that the defendant has acquired possession over the land to the exclusion of the plaintiff.

1. The trial court rejected the plea of surrender made by the defendant, it, however, relying upon the oral evidence and other evidence put the defendant made by the plaintiff as relevant, recorded finding that the defendant surrendered his possession and, therefore, the suit was barred by limitation. The first appellate court reversed the findings of the trial court and decreed the suit. It second appeal the Board of Revenue being made the decree of the first appellate court was reversed the decree of the trial court declaring the suit within the period.

2. In second appeal, the Board of Revenue has recorded a finding that the owner of the plaintiff from the fact in dispute, stands established from the admission made by the defendant (plaintiff) in his deposition in the suit itself.

3. In support of this position it is urged that the absence of any plea of surrender in the written statement, the Board of Revenue had no jurisdiction to draw out the suit of the plaintiff on the ground that the rights of the plaintiff stood extinguished. A true copy of the written statement of the defendant, has been filed along with a supplementary affidavit filed on behalf of the plaintiff. I have gone through the written statement made there over. It is true that neither the word surrender has been used in the written statement, nor whether plea specifically surrender required

by the form of general definition given in Schedule I Appendix A of the Code of Civil Procedure. A written statement should normally be a statement in which the plaintiff presented. The nature of the plaintiff's case is that he has deposited the practice of not observing the rule that in the case of a suit of a fact of law should be taken to mean a written statement made on account of a technical defect. Therefore, nothing will happen. In written statement but has 2 in accordance with Appendix A in Schedule I. The law is consistent in the substance of the statements made in the written statement and the law book.

4. The plea of surrender of the land in dispute by the plaintiff has been taken in specific terms. The plea is already stated has not been taken with the trial court. Nevertheless, the contents of the written statement have to be construed to determine whether the necessary facts constituting surrender have been stated or not. It is to be borne in mind that the word owner has no single meaning. Thus it has acquired a legal connotation and the mere use of this word does not fix the legal implications which are attached to it. However, if instead of using the word the defendant puts in the several material facts which such a defence can be inferred, the requirements of the law in complex and cases of law will have to proceed on the assumption that a plea of owner has been fully taken.

5. In para 12 of the written statement it was stated that Sukhdeo, the predecessor in interest of the plaintiff, acquired in the place of his in law about 50 to 55 years back. He surrendered his rights in all his properties including the land in dispute and gave them to his son, the defendant, but with any of the properties. In para 13 it was stated that Sukhdeo made the alleged surrender in the village where the land in dispute is situated and that he had nothing to do with the property, namely that a son was to be a possession over the land. On the contrary, the defendant had been in continuous possession over the land in dispute. In para 15 it was stated that Sukhdeo merely stated that there is a house with respect to which he has an interest, a son died in favour of the defendant. Finally, in para 16 it

was stated that the suit was barred by time. Having seen dated this matter carefully, I am of the view that an admission in spite of some has been made by the defendant.

7. Let us now examine the deposition of the plaintiff (the petitioner) recorded in the case to meet the submission of his learned counsel that the Board of Revenue has not only ignored the document, but not only taken an interest in the deposition out of the context, but has also thrown overboard the well accepted principle of the construction of an admission of a fact. It is to be borne in mind that the alleged admission has been contained in the statement.

8. In the statement, as filed, the plaintiff stated that the property in dispute was a joint family property. His father in 1940 acquired Khaddar rights over the same and obtained a deed and his name was entered in the revenue papers. The Lakhpal Bahadur, did not state his name after his father's death. His father did not surrender his rights. He did not execute any sale deed of his share in the house. Before we read the joint statement, we have to bear in mind that the property in dispute several years back related to the deposition of the plaintiff was under the municipal limits. This fact is evident from the statement of the plaintiff in the statement on which that prior to the submission of the suit for declaration made in the State of Uttar Pradesh will be to the Nagar Mahapalika. In the cross-examination the plaintiff stated that he enquired about the status of the property in dispute from the defendant's counsel, he was informed that he (the plaintiff) had no share in the same. Then he made enquiries from the village Lakhpal. He made this enquiry about 3 months back. The plaintiff was informed to a long about satisfaction over the family members as well as about the status of the various plots which are the subject matter of the suit. To my eyes, it is evident that there is no stage that he ever pay any tax in the Municipality with respect to the house. Apart from the property in dispute he held land covering 15 bighas. He had another property at that time. It was wrong to suggest that his father had executed any deed of transfer in favour of Ram or Rama's father. It was wrong to suggest that he had no property in village Bhojia (the village where the property in

dispute is situated). It was wrong to suggest that in village Bhojia he had no house. It was wrong to suggest that he had executed a sale deed of a share in the house in favour of Ram. Once it is ascertained that he had asked Ram to get his share sold-off. At that time no one else was present. Ram refused the request by saying that he had no share. Therefore the cross-examination put certain questions regarding the number of children for other members of the family had. There a question was asked about the possession of Ram over the property in dispute. He stated that he was paying land revenue with respect to the property in dispute and that payments was being made to Ram and so on.

9. Sections (1) and (2) of the Evidence Act make it clear that an admission is not conclusive proof of the matter admitted. An admission made requires evidence to be taken into consideration. Therefore before the Court does a lay statement against a party making an admission is open to the duty to examine the evidence in and out. It should examine the deposition whole and in the part in order and not to pick up material in support or material portion of an alleged statement. The admission has to be clear and full, therefore the admission must be an intelligent and comprehension one.

10. In *Rames Singh v. Mda. Bhagwati*, AIR 1956 AC 403 it was held that admissions have to be clear, they are not used against a person making them.

11. In *Agathys Pineda Bhagwati v. Bhagwan Shastri Bhagwati*, AIR 1957 AC 1191 the Court has taken the view that an admission should be clear, concise, definite and not ambiguous, vague or evasive.

12. In *Jasbir Das v. Purnan Das*, AIR 1958 AC 245 the view was taken that if a statement is up to the extent upon which admission the whole statement must be taken.

13. Reading the statement of the plaintiff through and through, the court was in entirety and also keeping in view the fact that the Board of Revenue has taken out of context also, from the deposition of the plaintiff (the petitioner) by the learned counsel, it is manifest that the plaintiff did not make any admission that a clear



court and indicate one who spent 15 or 16 years with the defendant. He would indicate how this plaintiff due to bad judgment on the property, is damaged. Since the Board of Revenue has not formed a very clear interest leaving the alleged intention of the plaintiff which according his findings on the question of power of the plaintiff from the property is damaged. The court has recommended to the appropriate Court for considering the other material evidence having bearing on the said question.

14. I am deliberately refraining from expressing any opinion as to what is the true view of the law although some debate has taken place before me on the question. There are authorities pronounced in order the Act for examining it can be the declaration of rights under S. 125-B. A counter-claim by a co-tenant is not contemplated by, in the same way the law can be putative. Therefore S. 129 of the Act will have no application in the case of a ten for premises for a co-tenant. For this reason by putative under S. 179 of the Act and no period of limitation is prescribed by or under the Act, Interim of S. 125 a claim under S. 125 Section 125 makes the provisions of the Limitation Act, 1963 applicable in the proceedings under the Act unless otherwise expressly provided by or under the Act. There is nothing in the Act to indicate that the provisions of the Limitation Act will not apply to suit preferred under S. 125B. Therefore the provisions contained in S. 17 of the Limitation Act will be deemed to be continued under section 179B. Section 17 of the Limitation Act provides that in the determination of the period hereby limited to any person for asserting a right for possession of the property the right to such property shall be extinguished. Therefore it is for the defendant to prove that the right of the plaintiff have extinguished even though the property is damaged as a joint family property and the person is co-tenant. There can happen only after cessation from the property independent for the period more than the one prescribed for the extinction of the right for possession. While going on looking on this question the Court will analyze the evidence led by the defendant on this behalf and then it will apply the relevant law.

15. The question now arises as to what

Court should be directed to give a final decision. The first appellate court, considering the case, has not come into view. The plaintiff should be directed to the final court by the first appellate court in the future. I therefore consider it appropriate that the Board of Revenue, should release the appeal and give a final decision.

16. The parties accordingly and it is ordered. The order of 26.7.1978 passed by the Board of Revenue is quashed. The parties to file the appeal of the respondent and decide the same on merits and in accordance with law and in the light of the observations made above. There shall be no order as to costs.

For the Court

1980 AL. L. J. 160

S. D. AGARWAL, J.

Shaw-John Probate, Plaintiff v. Joint Flood Mortuary and another, Respondents

Civil Misc. Writ Pet. No. 2044 of 1980 D/ 14/1980

(1) Civil P.C. (S of 1908), O. 41, R. 27, O. 42, R. 1, O. 41 A. R. 1, (as added by A.I.) High Courts - Second appeal - Additional evidence - Court can permit the party to submit additional evidence.

(Para 4, 5)

(2) Civil P.C. (S of 1908), O. 41, R. 27 - Second appeal - Additional evidence - Absence of a party, deceased simply an additional grounds - Court held was justified in allowing additional evidence.

(Para 6, 7)

Expenses Parties for Plaintiff Appellant Shree for Respondents

ORDER - This is a petition under Art. 226 of the Constitution. The dispute relates to mortgage proceedings in respect of houses Nos. D-20/22, 23 and 24 situated at Mohalla Aggar, Gurgaon, Gurgaon District, Haryana. Nos. 20/22 and 23/24 were situated at the time of the defendant Probate in the municipal records. House No. 24/23 was recorded in the name of the defendant Probate.

EC 13/10/1979/AA/1979

and Respondent 1 applied for extension of time for deposit of the additional evidence on the ground that this is the deadline of the deceased as the issue of a will is 24.10.1992. The petitioner contended that proceeding and the case was due to start in strictly only legal bar of the deceased.

3. The Judge Mahapalika, Varanasi allowed the application of the respondent 1. Aggravated, the petitioner filed an application before Judge Small Causes Court, Varanasi. The Judge Small Causes Court Varanasi allowed the appeal and set aside the order of the Judge Mahapalika. Against the order of the Judge Small Causes Court additional appeal was filed by the respondent 1 at the Court of District Judge, Varanasi being extension second appeal No. 53 of 1992. During the pendency of the appeal the appellant filed Petition for removal of application under O 41 R 27 of the Civil P.C. for substituting certain papers on the ground that the application was wrong and could not be correct papers in the lower appellate court. It was also submitted that certain papers in the context of the appellants are in their files already available in status had been misplaced and the multipapers were listed out and were being filed as additional evidence. The Judge Additional District Judge Varanasi before whom the appeal is pending allowed the application under O 41 R 27 Civil P.C. by an order dt. 28.11.1994. The order dt. 28.11.1994 has been impugned in the present petition.

3. I have found the learned counsel for the person Learned counsel for the petitioner has submitted that it was not open to the appellate court at the stage of second appeal to permit additional evidence to be taken. It has been further urged that no reasons have been given for accepting the documents sought to be produced as additional evidence and as such the order is reversed.

4. It is so far as the time extension of the learned counsel is concerned under O 41 R 27 Civil P.C. the appellate court was not to allow additional evidence or documents to be produced in the circumstances mentioned in the said rule. O 41 A has been added by the Additional High Court as additional order in the Civil P.C. O 41 A R. 1 provided as follows :-

1. Rules. — The rules contained in this Order shall apply to applications under High Court notwithstanding anything to the contrary contained in O 23 or any other order and the rules contained in O 23 shall be deemed to have been modified or repealed in their application to such appeals to the extent of their inconsistency or inapplicability of as indicated herein.

The above mentioned rule of O 41 A clearly contemplates that the rules contained in O 41 shall be deemed to have been modified or repealed in their application to second appeals in the extent of their inconsistency or inapplicability or as indicated in O 41 A. It is obvious the rules of O 41 would apply in the case of second appeals also.

5. O 42 R. 1 of the Civil P.C. lays down that the rules of O 41 shall apply, so far as may be, to applications from appellate courts. On a reading of O 41A R. 1 of the Civil P.C. added by the court and O 42 R. 1 it is clear that the Rules contained in O 41 would be applicable to second appeals also. In the civil statutes it is common to find that the second appellate court has no jurisdiction to entertain the application under O 41 R. 27 of the Civil P.C. and to pass orders thereon. The last submission of the learned counsel for the petitioner consequently was premature and is not substantiated.

6. In regard to the second submission of the learned counsel the court has considered the circumstances why it has permitted the additional evidence to be taken. The explanation given by the respondent has it has filing the additional evidence had been accepted. It has been further stated that the affidavits which have been filed before the Judge Mahapalika had been discarded simply on the technical grounds and as such it was necessary in the interest of justice to permit these affidavits of the existing witnesses to be filed. In my opinion the petitioner submitted reasons for allowing additional evidence. The order cannot be challenged on the ground as alleged by the learned counsel for the petitioner.

7. As the impugned order the court has permitted the petitioner submit the documents as submitted in the circumstances no prejudice has been caused to the petitioner by the order.



also referred to its explanation forthcoming from defendant where respondent had been made for holding an affidavit in support of the statement? W. I did not know the respondents. It appears that no in fact were present in that period and no confrontation was carried out. The High Court therefore held that the prosecution had not been successful in establishing the guilt of the respondents. The conviction was set aside and acquittal followed.

6. The facts of these appeals depend upon the appreciation of evidence of P W 1. This witness according to his testimony had accompanied the deceased when the accident took place. He stated that he had come to know the respondents on account of the fact that the respondents had money, trading transactions with the deceased P W 1 in his own management admitted. I do not know where Satish Chakry is employed as the time of the occurrence. But I had seen him during the 50 report. Chakry along with other accused persons. I do not know where Satish Sharma was living at that time. I do not also know about the other accused persons too. I never went to class courts. I never became involved with these persons. From these witnesses in cross examination the High Court came to hold that the prosecution of P W 1 with the respondents was not established. We do not think the conclusion of the High Court is open to challenge. So far as the statement of the in denial of P W 1 is concerned Mr. Tandon learned counsel for the appellants relied upon the evidence of P W 4. This witness was appointed by P W 1 for writing the first information report and the report was written on the road as stated by the witness. According to him whenever accident is reported involving the first information report, he found people sympathetic respondents had not assisted the deceased and had taken away from the spot. We do not think the evidence of the witness can be used by the prosecution to any appreciable extent.

7. It is unnecessary in the circumstances that one witness should be produced to prove a fact but unless the witness is very reliable the Court must be cautious to rely on his statement. P W 1 is admittedly a close relative of the deceased and he is a stranger to the in the accused are concerned. Unless there is

witnesses evidence to establish the accused persons in the crime, it would be difficult to hold that the accused persons had really caused death of the deceased. While all other persons relying on the prosecution case may not be disposed to hold by the High Court the reliability of the witness that helps in dispute and the prosecution has to fail as he has not established himself. If the link between the evidence and the respondents is not established the High Court was justified in acquitting them.

7. Where a plea is given that the appeal is for the High Court in such circumstances it not open to attack. The appeals fail and are dismissed. The order of acquittal passed by the High Court is upheld. The respondents are directed to bear their full costs as awarded.

Appeals dismissed.

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A V VADIA, J.

Satish Bawa Singh and another: Respondents,  
v. Raj Nath Singh and another: Appellants.  
Facts:

Civil Appeal No. 2073 of 1976 (J. 18 1985)\*

(A) Religious Endowments Act (21 of 1862),  
Ss. 18, 19 – Applicability – Sections 18 and 19 apply to religious endowments created both before and after 1862.

(Para 2)

(B) Religious Endowments Act (21 of 1862),  
Ss. 18, 19 – G. P. Public Charitable and Endowments  
Ordinance (14 of 1996), S. 10(1)(b) – Ordinance  
does not repeal the Central Act – It merely  
supplemented operation of Central Act retrospectively  
– Application under S. 18 made after expiry  
of Ordinance – Miscellaneous, G. P. General  
Classes Act (1 of 1994) Ss. 4, 7.

When the Legislature specifically referred to  
them using the expression "repealed" in sub-  
section (2) of S. 10 while using the same in sub-

\*Aggravated judgment and under vide, B. L. Kulkarni  
Dist. J. Hyderabad D. 2-5-1976.

act, in 1954 it was held without question that the Legislature acted without scruple in the Religious Endowments Act, 1950. It was on the contrary to allow the Act to remain on the Statute Book in spite of the Ordinance of 1976. Such an operation had been suspended temporarily in absence of the participation of the Ordinance. Much the copy of the Ordinance, therefore, the temporary relief which was given under Religious Endowments Act stood null and void as if it were not operative. (Para 5-7)

In the contention as reliance can be placed on the words, and 3-4 of the U. P. General Clauses Act, 1901 shall apply to such cases of application as if these amendments had been repealed by an Uttar Pradesh Act, consisting as follows: (2) of 3-4 of the Ordinance 3-4 of the U. P. General Clauses Act would have had no application to the provision arising from the suspension of the operation of the Religious Endowments Act, 1950, not being a case of repeal of an enactment. These words were hence inserted merely to amend the application of 3-4 of the General Clauses Act, even though not applicable in terms to the provisions of subsec. (2) of 3-4. Thus, the Religious Endowments Act, 1950, was not repealed by the Ordinance and application by opposite parties under 3-4 of Religious Endowments Act, 1950 could not be deemed to be incompetent in law. (Para 5-7)

(C) Religious Endowments Act (21 of 1950), S. 14 — Provisions in the case — General — Court need not express its final opinion on amendments made — No contention that para. 14a grounds must be taken into account. (Para 12)

Maikala Devaiah for Respondents R. K. Kallan for Opposite Parties

**ORDER** — The revision is dismissed against an order allowing an application under S. 14 of the Religious Endowments Act, 1950 and granting permission to the opposite parties to litigate for their interests mentioned therein.

2. The first contention raised by the applicants was that the amended Act was not applicable to the Religious Endowments which came into existence after 1950. In the present case the endowment came into existence long

after 1950. This question was referred by the learned single Judge who first heard the revision as a law Judge Full Bench which has in its judgment of April 17, 1964 unanimously answered the question in the affirmative. The opinion expressed is that by 14 and 18 of the Act apply the Religious Endowments created after 1950 and consequently the said Act was rightly applied to the instant case. The Full Bench therefore concludes on this point.

3. The second question which was stated before me by the learned counsel was that the Religious Endowments Act, 1950 was repealed by the U. P. Public Character and Hindu Religious Institutions and Endowments Ordinance, 1976. The Ordinance based on review of law and was not submitted by the Legislature. It was urged that the effect of the repeal of the Religious Endowments Act, 1950 notwithstanding the fact that the Ordinance by which it was repealed had lapsed, was that the Religious Endowments Act, 1950 ceased altogether and completely without from the Statute Book. The application made by the opposite parties under Section 14 of the Act on Dec. 18, 1974 must hence be deemed to be incompetent in law.

4. I am unable to agree. It is true that the repealed a repealing act does not automatically revive the repealed Act on the repeal of the repealing act (See S. 7 of the General Clauses Act). In the present case however, the Religious Endowments Act was not repealed by the Ordinance of 1976. The Ordinance merely provided that the Religious Endowments Act, 1950 shall cease to apply to charitable endowments and Hindu Religious institutions and endowments thereof. Section 14 of the Ordinance which provides for repeal and savings is held to be inoperative for this purpose of the case presently.

#### 5. Repeal and Savings

(a) The Uttar Pradesh Hindu Public Religious Institutions (Prevention of Disposition of Properties) (Temporary Powers) Act, 1962 is hereby repealed.

(b) Except as provided in subsec. (1), the provisions mentioned below shall cease to apply to charitable endowments and Hindu Religious Institutions, and the Endowments thereof to which the Ordinance applies and

S. 4 of the U. P. General Clauses Act, 1904 shall apply upon such cases of application as if these enactments had been repealed by an *Interim Provisions Act*.

(a) The Religious Endowments Act, 1940

(b) and (c)

(d) Sections 10 and 15 of the Civil P. C. 1908

(3) Pending/standing work repeat

(a) and (b)

(a) all proceedings pending before the State Government, any officer or authority or a court under the provisions of the repealed Acts, at commencement of the Ordinance shall subject to the provisions of Cl (3) stand.

(b) all suits already by way of right of law, appeal or application in which proceedings the Ordinance shall be available in respect of proceedings under the repealed Acts pending at the commencement of the Ordinance and the proceedings in respect of which the remedy at law had been exhausted under this Ordinance and such proceedings shall be removed from the scope in which they are to pending by the appropriate authority under the Ordinance.

5. The repeals that sub-sec. (3) of S. 4 of the Ordinance, repealed the legal and administrative provisions of which a well known interest system (2) of the Ordinance provides mainly that the Religious Endowments Act shall cease to apply to charitable institutions.

6. The repeal of an enactment has the effect of obliterating the Statute completely from the records of Parliament so to say it wipes out the enactment from the Statute Book as if it never existed. The Legislature may be presumed to be aware of the legal consequences of the repeal of an enactment. Consequently when the Legislature specifically refrained from using the expression 'repealed' in sub-sec. (2) of S. 94 while using the same in sub-sec. (3) of S. 94 it must follow without question that the Legislature's intent was not to repeal the Religious Endowments Act, 1940. It was, on the contrary to allow the Act to remain in the Statute Book as prior to the Ordinance of 1976. Only an expression had been suspended temporarily on account of the promulgation of the Ordinance.

7. With the expiry of the Ordinance, therefore, the temporary shield which was cast on the Religious Endowments Act stood removed and it again came into operation.

8. Learned Counsel however attempted to seek some assistance from the words, 'and S. 4 of the U. P. General Clauses Act, 1904 shall apply upon such cases of application as if these enactments had been repealed by an *Interim Provisions Act*,' occurring in sub-sec. (3) of S. 94 of the Ordinance. I am, however, clearly of the opinion that these words had no support in the arguments. S. 4 of the U. P. General Clauses Act would have had no application to the situation arising from the suspension of the operation of the Religious Endowments Act, 1940, not being a case of repeal of an enactment. These words were hence inserted merely to cancel the application of S. 4 of the General Clauses Act even though not applicable in terms to the provisions of sub-sec. (3) of S. 94.

9. In any case, reading S. 94 as a whole it have not the least intimation or holding that the Religious Endowments Act, 1940 was not repealed by the Ordinance. Consequently, the second submission is also rejected. The demonstrated is, the learned counsel on the effect of the repeal of a repealing Act not of an enactment and hence are not being dealt with separately.

10. Learned counsel lastly urged that (3) of the Religious Endowments Act requires the Court to determine the question whether permission should be granted or not. The order passed by the Court below does not indicate that he has applied his mind to the case and determined the issue.

11. I am unable to agree. The Court below has held after examining the allegations made in the application and the reply of the opponent that there are sufficient prima facie grounds for the issuance of the writ, warranting that permission should be granted. The Court below was not required to express any final opinion on the submissions raised by the parties on the merits of the respective claims. All that he had to do was to satisfy himself upon evidence whether there were sufficient and prima facie grounds for the initiation of the writ. The Court below has held that there are such grounds. No prejudicial error has been committed by the Court below in the behalf

as an exception to the Court is confined to a 10-year period under S. 117 of the Code of Civil Procedure.

In the result, the appellants and a deceased son I maintain orders to set aside.

*Principle discussed*

1976 AIR 1, 1976

S. 15, MITHAL, 1

Suresh Chandra Mohan Pant, Appellant v.  
Suresh Chandra Singh, Respondent

Second Appeal Nos. 123 of 1977 and 429  
of 1978, D. 13-11-1976\*

(14) S. P. Mohan Wagh Act (14 of 1946,  
No. 21), sub-S. 49 A as amended in 1971 —  
S. P. Mohan Wagh v. Respondents Act (28 of  
1974) S. 49 — Transfer of wagh property —  
Effect of Amending Act — Transfer made  
after commencement of Amendment Act  
valued pursuant to Board — It would be  
law by prohibition contained in S. 49 A. —  
S. 21 of Amendment Act does not apply

Where, certain property is subject to Wagh  
Act and has been transferred by the Board  
of an amendment of Amendment Act, 1971  
without the permission of the Board, the transfer  
is voidable under S. 49 A of the Act. (Para 12)

The amended provisions relating to wagh  
properties will apply to those Wagh sub-  
sided after which rules have been laid down  
by the Wagh Act, being amended in 1971.  
Merely because an Amending provision is  
passed, it is not open to a party to claim that  
it would not apply to the class of persons or  
things which did not come within its ambit  
before and in which the Act became applicable  
only after the amendment. If there is some Wagh  
sub, laid down during the period of operation of  
Wagh Act under S. 30, it is not deleted by  
S. P. Act No. 28 of 1971 by virtue of S. 2 the  
Act would become applicable to all Wagh  
properties of whatever class were earlier  
covered by the Wagh Act or not. Once the  
rule in S. 30 is withdrawn the Act becomes

applicable without exception to all wagh. The  
law in relation with the date of creation or  
continuance of wagh has to be the law  
from which the Act will begin to apply. From  
the date of commencement of the S. P. Act No. 28  
of 1971 the Wagh Act of 1946 would become  
applicable to all kinds of wagh whether or not  
they were approved by the Wagh Act prior to  
the date. Therefore, it must follow that all the  
provisions of the Wagh Act would  
be applicable to the wagh in question also as  
from 2 to 1971 inclusive, S. 49 A does not  
have effect of S. 19 will show that a claim is  
not applicable to cases in which S. 49 A applies. In  
applicable, contained in cases covered under  
three other sections mentioned, the Act, in  
the case in which the provision, but only after a  
new or proceeding initiated by the Board or  
such judgment or decree which had been  
obtained before the commencement of the  
amending Act. (Para 13)

(15) S. P. Mohan Wagh Act (14 of 1946,  
No. 21) (28 of 1971) — Amendment of Wagh Act —  
Deemed Judge has no power to make any  
decrease from the law of succession set out  
in deed of wagh and to appoint any person  
against value of Wagh. (Para 14)

Case Related Chronological Para  
1971 AIR 1235 (1976) 2 N.C. 100 AIR 1984  
SC 1276 1  
AIR 1984 SC 87 (1984) 1 N.C. 200 1  
AIR 1984 SC 145 (1984) 1 N.C. 103 10

By the Tribunal for Appellant S. S.  
Respondent for Respondent

**JUDGMENT** — There are two appeals  
arising out of two different cases in which the  
plaintiff was the same, and a common question  
of law involved in both of them.

1. In second appeal No. 123 of 1977 (28 of 1977)  
were that a wagh had been created by Smt.  
Bachman in 1971. According to the scheme  
of succession of Marwari as laid down in the  
deed of wagh on the death of the Wagh and  
Smt. Bachman's husband, Mr. Marwari.  
However, the plaintiff is claiming for  
succession rights to the wagh of Marwari  
deceased and claimed under it. This appeal  
1977 from the District Court regarding the  
change of Marwari Marwari Annual Returns

\* Joint judgment with learned Judge Chandra,  
for Addl. Dist. and Sessions Judge, Bareilly,  
D. 13-11-1976

the material. On 14 Feb 1973 the affidavit presented before the District Judge in support of the disputed copyright property in favour of the plaintiff. Acting upon that permission a writ deed was executed on 15th Feb 1973. A suit by the plaintiff was then pending against the defendant and in the absence of the Court the present plaintiff was substituted for the plaintiff.

3. The defendant contended the appointment of Bhaskardas Alameda as Plaintiff's agent appeared to be fraudulent in the writ deed as also the validity of the transfer in plaintiff's favour as being violative of S. 49-A of the amended U.P. Wages Act of Aug. 1960. This act by the plaintiff was dismissed by the lower appellate Court against which he had come up in appeal.

4. In Second Appeal No. 428 of 1979 however the facts are almost similar but for some difference in a few facts and it is not proper to set out the facts again here. This act has been decided by the Court below and a writ defendant's notice came upon appeal. The very same questions arise in the appeal also as above the validity of Bhaskardas Alameda appointment and of the suit deed.

5. Admittedly U.P. Wages Act 1960 was enacted to regulate, well control the working and management of wages in U.P. and wages of all kinds paid under it must conform to these state of things and which were stated by S. 3(3) of the Act. By U.P. Act No. 28 of 1971, which was introduced before the 1971 the Wages Act was amended to delete the words "State defined".

6. According to the affidavit the amended Act is prospective in operation and does not retrospectively affect those wages in which the present Act did not actually apply. In support of this submission he placed reliance on *Forbes Tea Supply Co. v. Central Govt.* (1961) 5 SCC 286 (AIR 1961 SC 17) particularly on the observations made by the Supreme Court in para 11 of the report which read that "all laws which affect substantive rights generally operate prospectively and thus as a general proposition there is prospectivity of laws affecting vesting rights and things over which the legislature must in clear and compulsion". He also relied upon *State of Tamil Nadu v. P. J. A. J. Srinivasan* (1954) 2 SCC 982 (AIR 1954 SC 141) where also it was held there by the Supreme Court

that the substantive rights could not be, or law cannot be taken away by an amendment of that piece with retrospective effect.

7. The contention of the plaintiff that he commenced in order —

1. Admittedly, Act of 1971 applies only to those wages which came into existence after the date of its commencement i.e. 11 Feb 1971 and not to pre-existing wages.

2. Admittedly those wages which were exempted from the operation of U.P. Wages Act 1960 would remain state controlled so as to be exempt there after the coming into force of U.P. Act 28 of 1971.

3. Amended provisions can apply only prospectively and the transfer in plaintiff's favour is saved by S. 12 of the Amending Act.

4. S. 49-A is not a bar to the payment obtained by the plaintiff.

8. The first two of these contentions are not contented and do not stand together. S. 2(1) of the U.P. Wages Act 1960 (the heavily state controlled territory in the Wages Act) provides that the Act shall apply to all wages irrespective of whether they were created before or after the commencement of the Act subject to such things as were made in the Act. Therefore on the commencement of the Act on 15 Feb 1960 all wages came under its purview except those for which there was a saving made in the Act itself or those wages did stand as unregulated as stated in sub-cl. (3) of S. 2.

9. What is contended by the respondents and state oppositely is that the amended provisions despite being prospective will apply to those wages and which were before the amendment by the Wages Act being accepted in 2011. I have no hesitation in agreeing to the submission, because as Amending provision is prospective it operates in fact not, means that it would not apply to the class of persons or bodies which did not come within its ambit before and by which the Act became applicable only after the amendment. Even if some wages and which were exempt from the operation of Wages Act under S. 2(b) notwithstanding U.P. Act No. 28 of 1971 by virtue of S. 2(b) the Act would become



applies to all. Though competence of whether this was earlier covered by the Waqf Act or not. Once the timing in S. 48A is withdrawn the Act becomes applicable without exception to all Waqfs. This has to be read with the date of enactment or establishment of any Waqf but at the date from which the Act will begin to apply.

16. Appellate also relied on a Supreme Court decision in *Pragati Education v. Subhash Chandra* (1986 3 SCC 683 - AIR 1986 SC 1413). This case involved being helped in the appellate goes contrary to his last of statements. It is stated that a rule amended prospectively would not be considered to have its effect of retrospectively merely because it is applicable also to those to whom pre-amended rule was applicable. In that case the provision had provided that Medical College which was then governed by certain statute of the University regarding price of post-mortem at the rate of one per cent of the aggregate. While he was still in the Medical College, the rule was amended. Accordingly, the price marks could be provided under the amended statute only at the rate of 1% of maximum marks assigned to each subject instead of the aggregate. The validity of this rule was questioned but the Supreme Court upheld the same and ruled that it would apply to all students whether admitted before or after the amendment though only prospectively. The same is the position here. The amended Act of 1971 will apply prospectively irrespective of the fact whether the Waqf was covered by the Act before the amendment or not.

17. As a consequence therefore from the date of commencement of the U.P. Act 26 of 1971, the Waqf Act of 1962 would become applicable to all kinds of Waqfs whether or not they were governed by the Waqf Act previous to that date. Once we reach this conclusion it then follows that all the matters commenced by the Waqf Act would be applicable to the Waqf properties also as from S. 61 (1) including S. 49 A.

18. Section 49 A of the Act has direct reference to the right of Musawils to transfer immovable property belonging to the Waqf and to transfer of moveable Waqf property by way of sale, gift, mortgage or exchange

would be valid without the previous sanction of the Waqf Board. Although permission to transfer had been obtained from the District Judge and 1971 is in point to the establishment of the amended Act not by that time its application in fact had been executed which was obviously done after 2-12-1971. The question arises whether such a sale deed would be hit by S. 49 A. According to Sir Fazlul Karim, S. 49 A will not apply to the sale of the transferee as this would be saved by S. 19 of U.P. Act No. 26 of 1971 which may be extracted below:—

Section 19

Transferee protection.—Nothing in S. 49 B, S. 50 A or S. 49 A enacted in this amended Act by the Act—

(a) shall affect any suit or other proceedings commenced by the Board in a Civil Court for any relief mentioned in the said provision before the commencement of this Act; and any such suit or proceedings may be continued as if the Act had not come into force; or

(b) affect the validity or enforceability of any judgment or decree passed by any Court before the commencement of the Act.

19. A bare perusal of the section will show that it does not apply to cases to which S. 49 A applies. Its applicability is confined to cases covered under three other sections mentioned therein. In any case even this provision can only save a suit or proceeding commenced by the Board or such judgment or decree which had been obtained before the commencement of the amending Act. In this case neither a suit nor a proceeding in the nature of the Board is pending at this time nor any judgment or decree had been obtained by the Board before the commencement of the Act. S. 19 of the U.P. Act 26 of 1971, therefore, cannot come to plaintiff's rescue. A suit permission to transfer the Waqf property obtained by the Musawil from the district Court does not per se amount to transfer of the property. It only implies the Musawil to exercise the sale deed. Until the deed is executed according to law no transfer can be effective and if after S. 18 (1) any such transfer is effected it would be void in violation of S. 49 A of the amended Waqf Act. It is therefore obvious that the transfer in favour of the plaintiff which was made after S. 61 (1971) would be hit by the

profits were contained in S. 49 A for want of prior permission from the Waqf Board within limit.]

4. As a last resort the Tribunal sought to say that the defect if any in the above order stood cured during the pendency of the appeal in this Court. The submission that the Waqf Board had initiated proceedings against the plaintiff under S. 49 B and in view being shown by the plaintiff the notice were withdrawn. It is therefore argued that this should be deemed to be the permission for transfer so as to save any pending issues on the validity of the sale deed. The argument has no merit. S. 49 B is a special remedy designed to give the Waqf Board with powers to put the waqf property, against being dealt with in a manner contrary to the provisions of the Act. It has been given the power to initiate an enquiry and after finding the facts concerned to adjudicate upon the rights pertaining to the property. The Board can issue an order, subordinated with the act of the Collector. This action however does not give any authority to the Board to validate any sale deed attempted in violation of the provisions of the Act. All that the Waqf Board can do is to discharge its notice and to refuse from taking any action as contemplated under S. 49 B of the Act. However, by mere discharge of notices a domain follower to the sale deed executed in contravention of S. 49 A would stand validated. Suppose even a court below the Court below has the jurisdiction to decide the question of validity of the transfer.

5. In view of what I have said above, I must hold that the sale deed executed by Usmanat Ahmad Mamooli of the waqf is plaintiff's transfer was void and ineffective being violative of the provisions of S. 49 A of the Act.

6. In the light of the view that I have taken above it is not necessary for me to decide the intervening question raised by Sri O. N. Varma, learned counsel appearing for the appellant in Special Appeal No. 457 of 1975 about the validity of appointment of Sri Shamshad Ahmad ul Mamooli of the waqf. Suffice it to say that the District Judge had no power to initiate any departure from the law of succession set out in the deed of waqf and to appoint any transferee against the wishes of the Waqf.

7. In view of the above discussion I find no force in Special Appeal No. 423 of 1977 which deserves to be dismissed with the Special Appeal No. 425 of 1978. Orders be allowed. I will prohibit any further one order as to costs in the two appeals. The appeals are disposed of accordingly.

8. The District Judge has only prayed that a copy of the judgment be provided to him within a week. Other necessary measures may within a week on an application made in that behalf on payment of charges according to rules.

Order accordingly.

1986 ADJ. 2, 2 107

S. D. AGNIWALA, J.

Ravi Swaroop, Petitioner v. District Judge Banda and others, Respondents

Civil Misc. Writ No. 2614 of 1985. D. 24-1-1986

**Under Probate Impression of Calling on Land Holdings Act, I of 1962, Sec. 3(a) and (1), S. 12A, Proviso (a) — Determination of original land — Results of Proviso (a) to S. 12-A is available only when transfer has been opened under sub-sec. (2) or a partition has been opened under sub-sec. (7) of S. 5 and not otherwise.**  
(Para 8, 9)

Case Related Chronological Para  
1985 ADJ 107 10

R. S. Chaudhri for Petitioner Ravi Ravi Shamshad, Standing Counsel for Respondents

**ORDER.** — This is a petition under Art. 226 of the Constitution. The petition seeks out of proceedings under the C. P. Impression of Calling on Land Holdings Act, 1962 (hereinafter referred to as the Act).

2. Ravi Swaroop, the petitioner and Dattania Prasad, respondent, are co-defendants. Proceedings under the Act were initiated against the former by the District Judge by an order dt. 28th-12-1975. This order was produced before me by the respondents with the opinion of the petitioner. The head of Dattania Prasad

SC/CC/C-3402/OPAL/1986

was declared surplus in the context of S 4(1) because of required land. Grant in the matter when this order was passed. Desai Prasad did not oppose the plea in law. Hence, usually, Appeal No. 41 and 375 were dismissed. This order was issued in 1976. Desai Prasad moved an application under S 4(4) of the Act for setting aside the order. He gave his reasons in respect of the land which was required for the agricultural purposes. This application was initially rejected by the Prescribed Authority. Thereafter an appeal was filed. The appellate Court in an order dt. 11th May 1979, remanded the case to the prescribed authority for reconsidering the application of Desai Prasad in regard to the change given by him in accordance with the plan issued under the Prescribed Authority. After remand, under the Prescribed Authority rejected the application for change but subsequently the order was reversed and he applied under dt. 28th Jan. 1980 the same given by Desai Prasad was accepted. After this was accepted by the Prescribed Authority, the petitioner filed an application on 12th April 1981 stating therein that at last the change which had been given by Desai Prasad related to the plot which had come to the stage of the permission by virtue of a permission issued by him under plan dt. 18th June 1974. This permission was by virtue of a composite structure between the parties. This application of Ravi Srinivasan was accepted on 26th Jan. 1982. Against the order rejecting the application dt. 28th Jan. 1982, the petitioner filed an appeal before the District Judge, Ramia. The appeal was also dismissed on 16th Dec 1982. The petitioner has now challenged the order dt. 26th Jan. 1982 and 16th Dec. 1982 by means of the present petition.

3. I have heard the learned counsel for the parties.

4. Learned counsel for the petitioner has contended that in accordance with S. 12 Act of the Agr. the Prescribed Authority as well as the appellate Court acted illegally in accepting the change in the owner holder Desai Prasad in respect of the plot which was the subject of permission dt. 18th June 1974 and as such the authorities have erred in holding that the said permission was valid in the eye of law. The argument of the learned counsel is that, firstly, the plot, which was not the subject matter of permission, should have been taken towards

the agricultural land and there was not sufficient area along the plot which was the subject matter of permission, could have been taken as only the surplus land.

5. I have heard the learned counsel for the respondent Desai Prasad who has retained the construction raised in behalf of the respondent.

6. Section 7 of the Act provides that on and from the commencement of the Urban Planning and Development Act 1977 no person shall be entitled to hold or aggregate throughout the land which is held in excess of the ceiling area applicable to him. The Amendment Act of 1977 came into effect from 1st July 1977. The effect of S. 7 is consequently, in that when 26th June 1975, Desai Prasad, a tenant, obtained a land lease under the ceiling area available to him. Subsec. (7) of S. 7 which is relevant for the purpose of determining the construction in the present petition, relates to persons who might have taken a mortgage in the land belonging to the tenant holder. It provides that in determining the ceiling area applicable to a tenant holder, any person or land made after the passing of the day on 26th June 1975, is taken but for the purpose would have been declared surplus land under the Act shall be ignored and not taken into account. A proviso has been added in which, in certain circumstances, the provision though it may have taken place after the said date shall still be regarded as a valid provision for the purpose of determining the ceiling area.

7. Section 12 A of the Act laid down the principles which would be applicable when an application is made for a lease holder. It has been provided that as far as possible, the Prescribed Authority shall accept the change given by a tenant holder. This point is subject to certain provision. Now so far as relevant for the purpose of the present case, it provides as under:

12 A (1). Where any person holds land in excess of the ceiling area including land which is the subject of any mortgage or person referred to in subsec. (6) or subsec. (7) of S. 7, the surplus land determined shall, in the respondent's land other than which is the subject of such mortgage or person, and if the surplus land includes any land which is the subject of such



1986 ALL I 1 172

K P SIVARAM I

**Bangalore Farm and Industries Ltd, Bangalore  
Producers v. State of Karnataka (Producers and others  
Respondents).**

**Civil Misc. Writ Pet. No. 1823 of 1977 (Dr  
P. J. Jeeva).**

**U. P. Public Premises (Eviction of  
Unauthorized Occupants) Act (22 of 1975),  
S. 9 = Public Premises (Eviction of  
Unauthorized Occupants) Rules (1975), R. 9  
— Appeal — Opposite party as well as persons  
as actual possessors entitled to be evicted  
under S. 9 — Such persons as actual possessors  
as "persons aggrieved" within meaning of R. 9  
and has right of appeal against S. 9 order. **ALL  
1975 SC 1001** **Bal. ac.** (Para 11, 12)**

**Case Related: Chronological Para-  
ALL 1975 SC 1001** (I)

**G. N. Verma for Petitioner Standing  
Counsel for Respondents**

**ORDER.** — That writ petition has been  
dismissed against the judgment of Shri A. B.  
Wasthi, District Judge, Hassan dt. 26-8-1977  
in Revision Appeal No. 202 of 1975 Bangalore  
Farm and Industries Ltd, Bangalore, District  
Muzari versus State of U. P. and another.

2. It appears that Division Case No. 146  
of 1972-73, State of U. P. v. Bangalore Farm  
& Industries Ltd, Bangalore, District  
Muzari was raised under S. 5(1) of the U. P.  
Public Premises (Eviction of Unauthorized  
Occupants) Act, 1975. It has been alleged that  
order under S. 9 of the aforesaid Act was  
served upon the opposite party mentioned in  
the above cited revision writ. The persons  
petitioners being as actual possessors over the  
deposited land had commenced the claim of title  
of U. P. and had asserted that the petitioner  
had become order of the deposited land and  
that the possession was not unauthorized.  
Therefore the proceeding should be stopped.  
The prohibited authority through its order  
dt. 16-12-1974 passed the following order:—

"Now, therefore, in exercise of the powers  
vested under (1) of S. 5 of the U. P. P.  
(E.U.O.) Act, 1975, I hereby, under the seal

of the court, as well as others who are in occupation  
of the said public premises or any part thereof  
to vacate the said public premises within 15 days  
of the publication of this order. In the  
event of refusal or failure to comply with this  
order within the period specified above, the  
said O.P. and all other persons concerned are  
liable to be evicted forthwith and public premises  
I need be by the use of such force as may be  
necessary. (Emphasis added)

3. Against the judgment of the prohibited  
authority, the petitioner preferred an appeal,  
which has been dismissed by the appellate  
court through its order dt. 20-8-1977. Against  
the judgment of the appellate court, the  
petitioner has approached this court under  
Art. 226 of the Constitution.

4. The learned counsel for the petitioner  
has contended before me that the appellate  
court has seriously erred in holding that the  
appeal is in violation of the petitioner was  
not a competent appeal and therefore the  
same has been rejected.

5. Second contention raised on behalf of  
the petitioner is that the subordinate authorities  
have seriously erred in holding the possession  
of the petitioner over the deposited land is  
unauthorized.

6. Last contention raised on behalf of the  
petitioner is that a dispute exists between  
the parties pending before the revenue courts  
hence the summary proceeding for eviction  
of the petitioner is wholly unjustified in the  
circumstances of the present case.

7. The learned counsel for the State of  
U. P. has submitted in reply that the impugned  
judgments do not suffer from any patent, error  
of law, hence they need not be interfered with  
by this Court. He has emphasized that the  
possession of the petitioner over the deposited  
land is unauthorized and that he was rightly  
evicted from the deposited land. It has also  
been emphasized that there is no legal bar for  
proceeding against the petitioner in a summary  
proceeding when the contention maintained in  
the Act is rejected and the petitioner is liable  
to evict.

8. I have considered the contention raised  
on behalf of the petitioner (Section 1 of U. P. Act  
No. 22 of 1972 reads as follows:—

(d) If after considering the case, if any shown by the parties in possession of a notice under S. 4 and/or evidence in their possession in support of the same and after giving him a reasonable opportunity of being heard the prescribed authority, satisfied that the public premises are in a substantial occupation, the prescribed authority may make an order of eviction for present to be recorded thereon drawing that the public premises shall be vacated on such date as may be specified in the order. In all persons who may be in occupation thereof at any part thereof and cause a copy of the order to be affixed to the said land at once after completion of part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction when they demand the date of its publication under the sub-section (1) the prescribed authority or any other officer duly authorized by the prescribed authority in this behalf may visit that person there and take possession of the public premises and may for that purpose use such force as may be necessary.

Section 5 of U.P. Act No. 32 of 1972 reads as below :-

An appeal shall be from every order which prescribed authority made in exercise of any powers conferred under S. 4. The an appellate Officer who shall, be the District Judge of the District in which the public premises are situate or such other judicial officer not below the rank of District Judge as the District Judge may designate in this behalf.

(The last of the Section is not material for considering the question involved in the present writ petition.)

Section 16 of the U.P. Act 32 of 1972 reads as below :-

Save as otherwise expressly provided in this Act every order made by a prescribed authority or appellate officer under this Act shall be final and conclusive provided in question in any original writ, application or revision proceedings and its execution shall be granted by any Court or other authority in respect of the order or when go to be taken in pursuance of any law as conferred by or under this Act.

9. The last period of the operative portion of the order of the prescribed authority is :-

“(1974) such to be evicted from the public premises shall be evicted from the disputed land over and over again (Case No. 144 of 1971-72) which was started against the Bangkok Farm (Bangkok and Industries Limited (Bangkok District (Nagpur) because the petitioner is in actual occupation of the disputed land)

10. The main issue of the appellate court has already arrived at holding that the appeal filed by the petitioner was not competent. The appellate court has expressed itself as sure [1 of its judgment as below :-

The present appeal has however been filed not in District Farm, Bangkok and Industries Ltd. in which the notice under S. 4(1) of the Act was given and against whom the order of eviction has been passed but by Bangkok Farm and Industries Ltd. The evidence would show that there are separate entities and the difference in name is of no avail.

11. In the last instance period the appellate judgment also the appellate court has expressed itself as below :-

When a writ filed in the appeal because it was the notice under S. 4(1) of the Act was issued to the Bangkok Farm and the order of eviction has also been passed against the said Bangkok Farm. The Bangkok Farm did not file any objection to this notice and is not before in its appeal order. The applicant was not entitled to file an objection to the order of the District Authority, and it is equally clear that it is not competent to file the present appeal.

12. In any case the approach of the appellate court is possibly erroneous in the position adopted in the case. In possession of the order of the prescribed authority the petitioner was liable to be evicted from the disputed premises over by way of law and so every order is appealable under S. 5 of the Act. I think that the appellate court has a right to quash an appeal and an appeal is not competently dismissed on the ground that it was not competent. The order passed by the prescribed authority in the appellate court under the Act shall be final and cannot be called in question in any original writ, application or revision proceedings and its execution can be granted by any court or other authority in respect of any order or to be taken in pursuance of any power conferred by or under this Act. [

think that the appellate authority has properly acted in declining the stay of the order in the instance of the petitioner was not competent. In the order passed by the prescribed authority the point now being in actual occupation of the disputed premises was taken to be proved. Therefore, it has a right to approach the appellate court for redress. The expressed intention of the appellate court desirous to be quoted in the said printed Rule 3 under the provisions of U.P. Act No. 22 of 1977 provides that an appeal under 3-7 may be preferred by the person(s) properly authorised under 3-1 or 3-7. In AIR 1979 SC 2085 the Council of Ministers v. M. V. Subbala has expressed the view, person approved as below at p. 2048 para. 27 -

"When a right or appeal or Court agrees, an administrative or judicial decision is created by statute the right is available, cannot be a person aggrieved against who claim to be aggrieved. The meaning of the words 'a person aggrieved' may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him.

13. Formulae agree cannot in a situation that the petitioner validly approved by the order of the prescribed authority as a was better to be awarded the funds of the State of U.P. by way of necessary fund. The appellate court has failed to consider the aspect of the matter while observing that the appeal is the essence of the petitioner was unreasonable. Therefore, the order of the appellate court is partially erroneous and deserves to be quashed.

14. The finding of the appellate court that the possession of the premises over the disputed land was unauthorised and unreasonable within the circumstances of the present case. It has not been properly disposed before me that the disputed land was awarded to be claimed by the petitioner but he has been that has not been exhibited in favour of the petitioner for some reason. The question arises as to how and when the possession of the premises over the disputed land became established. The petitioner has filed declarations such as an estate right in the disputed land before the revenue court and that status is pending before another person. Therefore, it has become

necessary to direct the appellate court to re-examine the status of the parties with regard to authorised occupation of the premises over the disputed land.

15. Section 22(b) of U.P. Act No. 22 of 1977 requires notice to all persons interested, that is to say, all persons who are or may be in occupation of or claim interest in the public premises in question. It is against the proposed order in or before such time as is specified in the notice, being a time not earlier than ten days from the date of issue thereof.

16. The prescribed authority shall cause the notice to be served under personally, shall also persons concerned by having it affixed on the outer door or some other conspicuous part of the public premises and in any other manner provided in the C.P.C. 1908.

17. It must very clear whether any notice under 3-7 was served upon the petitioner and whether the petitioner could be legally treated as the one giving rise to the present was petition. The main of police demand that the appellate authority must address itself to the question whether the petitioner is liable to eviction if no action contemplated by 3-4 of the Act was served upon the petitioner.

18. As regards propriety of necessary proceeding for evictions of the petitioner, what balance between the petitioner and the State of U.P. is pending before a revenue court, it should also be specifically ascertained by the appellate court when the matter is taken up by it further.

19. In the result, the writ petition succeeds and the impugned judgment of the appellate authority is 30-4-1977 is reversed. Appeal No. 224 of 1975 Rangark Panna and Industries Ltd. Rangark v. State of U.P. and another is hereby quashed and the appellate court is directed to re-examine the claims of the parties in the light of the observations made above. There would be no order as to costs.

Prison allowed

1986 ALL. L. J. 375

= 1986 Cr. LJ 2095

= AIR 1986 Supreme Court 1888

(Crim. 1976 All. W.C. 492)

S. NEELAKAZH PILLAI, ALI AND  
A. VARADARAJAN, D.

Criminal Appellate Nos. 4044 of 1977 Dr.  
1-8-1978

State of P. Appellants; Baldev Chav and  
others acs etc. Respondents

(A) Evidence Act (1 of 1872), Sec 3 and 4  
= Material witnesses = Evidence of =  
Both regarding apprehensions 1976 All. W.C.  
492, Reversed

There is a clear probability that in the absence  
of any independent witness, the evidence of  
apparent witnesses should be viewed not at  
the outset of or should not be relied upon for  
something so occurred. When the law requires  
it that where the witnesses are interviewed, the  
court should approach their testimony with  
suspicion and caution in order to exclude the  
possibility of false implication. The evidence  
of apparent witnesses is not like that of an  
apparent witness as presented in the case and  
requires corroboration. But the said evidence  
is as good as any other evidence. In a far-  
corner village, it will rarely be impossible to  
find independent persons to come forward  
and give evidence and in a large number of  
such cases only persons witnesses would be  
found and probable witnesses. Once it is  
found by the court in an analysis of the  
evidence of the witnesses that there is  
evidence to believe that the witnesses are  
not the witness as interviewed cannot persuade  
the court to reject the prosecution case on  
the ground alone 1976 All. W.C. 492, Reversed,  
AIR 1975 SC 1845, Rat. on. (Para 3 and 5)

(B) Criminal P.C. 12 of 1976, S. 164 =  
P.C. = Contents of 1976 All. W.C. 492,  
Reversed

It is a matter that as P.C. is not needed to  
be a very detailed document and it cannot be  
given only to the witnesses of the allegations made  
and therefore the absence of the content of  
a letter would not put the prosecution case on

its case 1976 All. W.C. 492, Reversed

(Para 12)

Cases Related Chronological Para  
AIR 1976 SC 1845, 1976 Cr. LJ 2095

**FAZAL ALI D.** = These appeals by  
special leave were put off in paragraph dated  
December 19, 1976 of the Allahabad High  
Court by which the High Court reversed the  
conviction and sentence of the respondents  
for various offences under Sec. 147, 148, 149, 150  
and 302-304 of the Indian Penal Code and  
acquitted them of all the charges.

2. The prosecution case is fully detailed  
in the judgment of the Sessions Judge and the  
High Court and it was necessary to enter the  
same grounds almost again. The court should  
only the local nature of the case presented  
by the prosecution before the trial court. The  
evidence of the witnesses in the case which  
material in the facts of the case appears  
to have been the last step of a long long  
process as a result of a long standing enmity  
between the parties for the last twenty five  
years.

3. It was contended on behalf of the  
appellant that the High Court must not  
interfere with the conviction of the respondents on the  
ground that all the witnesses interviewed support  
the occurrence were interviewed persons and  
therefore no evidence could be placed on their  
evidence. To begin with, we must say that the  
view that the evidence of the witnesses is  
not reliable is a clearly wrong and per se  
approach. There is no law which says that in  
the absence of any independent witness, the  
evidence of apparent witnesses should be  
viewed not at the outset of or should not be  
relied upon for something so occurred. When  
the law requires it that where the witnesses  
are interviewed, the court should approach their  
evidence with care and caution in order to  
exclude the possibility of false implication.  
The court also states that the evidence of  
apparent witnesses is not like that of an  
apparent witness as presented in the case and  
requires corroboration. But the said evidence  
is as good as any other evidence. It may not  
be necessary that in a far-remote village  
as in the present case is mentioned by us  
either it will rarely be impossible to find  
independent persons to come forward and  
give evidence and in a large number of such



most only persons witness would be several and possible reasons. The Court in *Belvin-Lee* (41, P. 438 297-300 1985-1970 C-V-13 1778) made the following observations:

"In case where a murder takes place in a place where there are two factors which appeared to each other it would be able to protect independent persons to come forward to give evidence and only persons witness would be several and possible witnesses to the incident. In such a case it would not be able to reject their testimony out of hand merely on the ground that they belonged to one faction or another. Their evidence has to be accepted on its own merits."

4. The High Court has used the degree and extent to be aware of the evidence by the Court but has unanimously accepted the degree while dealing with the evidence produced by the prosecution.

5. The elements of the evidence to be considered in the case (as it stands) the evidence despite being several but not on the merits and are contradictory. Once it is found by the court on an analysis of the evidence of an independent witness that there is no reason to believe that there is the same fact that the witness is a witness cannot persuade the court to reject the prosecution case on the ground alone.

6. The more often of the prosecution in the present case depends on the evidence of P.W. 3, 4 and 11. It is a possible evidence and it is not clear in the case whether, or whether independently, in their evidence.

7. On a review of the judgment of the High Court in *Belvin-Lee* the court has made other observations in a rather summary fashion but the court has also weighed with the High Court while accepting the evidence was that as the witnesses were several and not independent, it was not safe to accept the evidence. On the other hand, a review of the trial court's judgment clearly shows that each witness' testimony or evidence against the prosecution has been fully and with care and diligence. The trial court has made a very deliberate and detailed analysis of the entire evidence before coming to the conclusion that the prosecution case was not

proved. The High Court does not seem to have displaced the important circumstances referred to be relied upon by the trial court but have a possibility of the prosecution case. The High Court seems to have relied firstly on the long standing enmity and hostility, on certain observations which are not of a very real nature and which can be found in the present case. The court has observed in its reasons that the duty of the court was to reject truth from falsehood and the duty from the past.

8. With respect to the evidence of P.W. 3, 4 and 11 in the present case, the court has observed that the High Court observed that -

"Having thus considered all these points raised on behalf of the appellants, the vital question would be whether in these circumstances the statements of the eye witnesses should be believed. The learned Sessions Judge seems to have concluded that there was nothing to show that these eye witnesses had any interest in falsely implicating the accused persons. The remark of the learned Sessions Judge is contrary to his earlier observations according to which these eye witnesses were present in the courtroom and at least two of them namely, Adams, Morris and John who were hostile to the accused persons."

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Having thus considered the entire evidence and the circumstances and probabilities, we are of the opinion that because all the eye witnesses are married persons and because they had not been able to relate a consistent and convincing story, it would not be possible to arrive at a finding of conviction."

9. In order to illustrate our point of view we may have to make through parts of the findings given by the two courts. The trial court after a very careful marshalling of evidence observed that

The position that follows is that from the statements of the eye-witnesses, and Rashed Ezz. (as it is fully established that the occurrence took place on 13-4-74 at 3 p.m. There is a statement of evidence to indicate that the occurrence took place in the night and in the absence of Adnan, Youssef, Jaber, Dina and others.

10. As regards the testimony of Anand Choudhary concerning the knife and knife wounds the trial court took a combination of the views, as shown above, to the following finding:

In case of the knife, I have absolutely no doubt in accepting the evidence of Anand Choudhary concerning the knife and knife wounds by the investigating officer as alleged.

11. Accepting the testimony of Anand Choudhary that the trial court found that Sultan Singh may, have committed the crime at the time of the shooting. The learned Judge has not pointed out that the other witnesses did not support the said evidence. Anand Choudhary's statement of credibility could be supported even on this fact.

12. The High Court has made capital of the fact that there were three injured wounds on the level of the forehead and under these wounds there was a long, jagged fracture in frontal parietal and temporal bones, and yet the prosecution case is that there was no attack by knife. It is a matter that if Ranga Ram was attacked with knife by Sultan Singh and Raghu (accused) and the post mortem report pointed out the fact that there was conclusively shown that Ranga Ram was also attacked with knife and the mere fact that the attack by knife was not mentioned by the FBI would not be sufficient to deluge the important fact. It is a matter that as FBI is not intended to have very detailed documents and is meant to give only the substance of the allegations made and therefore the absence of the mention of a knife would not put the prosecution case out of court.

13. The High Court relied on the circumstance that the report of P. M. H. Chandra Das mentions a letter written by the Director of the Department of Health under the signature of Hari Singh Ram Jaiswal, Health Minister. This is also a conclusion based on pure speculation. It is true that Hari Singh Ram Jaiswal, the Health Minister was admitted to T. B. Jaiswal Hospital on 21-4-74 and discharged on 30-5-74. From this the Judge has concluded that it cannot be said that the Director wrote the reply report of Sultan Singh.

14. The High Court adversely commented regarding the number of shots fired at Ranga Ram. This fact is clearly proved from the

statements made by FBI and Sultan Singh, Sultan Singh and Choudhary. The shots and pellets from the west bank of the river Ghagra and all on a sudden fired 6-7 metres from Ranga Ram, the point of Choudhary. One medical and Ranga Ram fell down and that Aditya Narain and others withdrew the point from Choudhary. We do not find any authority in the statement as equally proved out by the trial court. The trial court has held that as a combination of the material it had been established that at least three shots were definitely fired out of which one shot material and the other two shots that caused Ranga Ram. The doubt or hypothesis in this part of the prosecution case which has been adversely commented upon by the High Court.

15. We have given a few illustrations of the reasons given by the High Court for reversing the judgment of the trial court and any knowing person who examines these reasons will be convinced that merely because of certain omissions or misstatements the entire case cannot be thrown out.

16. We have ourselves very carefully perused the judgment of the High Court and except for small discrepancies here and there we do not find any reason why the High Court should have interfered with the detailed and extensive analysis of the evidence made by the trial court which had the usual advantage of watching the demeanour of the witnesses while they were giving evidence. We are therefore clearly of the opinion that judgment of the High Court is absolutely wrong and it has not great importance on small or insignificant facts or discrepancies and was mainly influenced by the fact that no independent witness was examined by the prosecution, about which we have already discussed above.

17. For these reasons we are satisfied that it is not a case in which the view taken by the High Court is an opinion which must be called reasonable. This is a case case where the High Court greatly erred in interfering with the judgment of the trial court.

18. The next question for consideration is after having been convinced that the prosecution has proved its case beyond reasonable doubt, what is the sentence which

is to be imposed on the respondents<sup>2</sup> in the law, and circumstances of the case. We find that respondents under various periods of death is not called for and the order of justice would be more by maintaining the death sentence to imprisonment for life.

19. Therefore we allow these appeals to make the judgments of the High Court and correct all the amount under S. 200(1)(b) of the Indian Penal Code and structure there is representation for life. In case the respondents appeal that they had furnished funds 'sufficient' and they shall be taken into custody and sent to prison for serving out the sentence imposed.

*Appeals allowed*

1966 ALL. L. J. 178

= AIR 1966 Supreme Court 444

(From Allahabad<sup>2</sup>)

P. S. BHAGWATI AND S. B. MEHTA JJ.

Civil Appeal No. 41 of 1960 (D. 21.12.1954)

**State of Bihar and others, Appellants v. B. D. C. and others, Respondents**

**Constitution of India, Art. 226 — Cr.P.C. (1950) O. 31, R. 5 — Writ petition — Abatement for failure to bring legal representatives of deceased respondent on record within time — Petitioner was brought before about death of respondent taking no steps to bring his L.R. on record for 4 years — Subsequent application for setting aside abatement — Held petitioners being persons from small area application dismissed to be allowed W.P. No. 1000 of 1954, D. 15.10.55 (C.A.B.) Reversed. (Para. 1)**

Mrs. Usha Kaper, Advocate for Appellants. Mr. Shail Kishor Singh, Advocate for Respondents.

**JUDGMENT** — The sole ground on which the High Court has dismissed the writ petition that it has abated as an illegitimate Respondent No. 1 and hence it stands against

Respondent No. 2 on account of the legal representatives of Respondent No. 1 not having been brought on record within a period of 90 days after the death of Respondent No. 1. It is to be noted that the appellants had taken no steps to bring the legal representatives of deceased and respondent No. 1 and respondent No. 2 upon record before according to respondent No. 1. The appellants have also the death of respondent No. 1. But they have no application made to the appellants for bringing the legal representatives of the deceased respondent No. 1 on record. We do not think that in the circumstances of the present case that would be a valid ground for refusing to grant the application of the appellants for taking into the abatement and bringing the legal representatives of the deceased respondent No. 1 on record before. The appellants are admittedly from the rural area and a country like ours where there is so much poverty ignorance and illiteracy it would not be fair to presume that everyone knows that on death of a respondent the legal representatives have to be brought on record within a certain time. The only argument is that the application for bringing the legal representatives of the deceased respondent No. 1 should have been granted. We accordingly allow the appeal to make the order of the High Court and direct that the abatement if any shall be set aside and the legal representatives of deceased respondent No. 1 shall be brought on record and the writ petition shall be remanded to the High Court for disposal according to law. We only make it clear that in making this order we must not be presumed to have expressed any opinion as to whether or not contrary to the law in the present case. It will be for the High Court to decide the writ petition according to law. We would request the High Court to dispose of the writ petition as a very speedy case and as far as possible before the end of February, 1965. The order of the court made by us will stand vacated.

*Appeal allowed*

W.P. No. 1000 of 1954 (D. 15.10.55) (C.A.B.)

SC/CC/1966/149

## 1988 MEL 1, 175

## IN FAMILIAL DEPTHS

*Devanaj Alwar* (author) is L.R. and other appellants; *Ravi Raj Singh* and other respondents.

*Second Appeal No. 175 of 1974 (2-11-1974)*

(1) Civil P.C. (of 1986) Q. 4, R. 17 and 7 — *Readings* — Partitioned life insurance money withdrawn.

A party cannot file insurance money as joint. Insurance mon. cannot be held by a unit with an insurance co. by right and it is K. 1<sup>st</sup> a principle.

(Para 10)

(2) Civil P.C. (of 1986) Q. 4, R. 17 and 7 — *Amendments* taking contradictory plea by withdrawing admission made — Not permissible.

(Para 11)

D. P. S. Chatter and R. R. P. Singh for appellants; Pappan Rao for respondents.

**FINDINGS:** — Reader, looking further, on consistency life is compensation and what insurance plan. Plans in life insurance cannot move with concerning question and declaration about insurance agreements either in or otherwise. The trial court dismissed the suit in 1970. The 2<sup>nd</sup> appellate court has overruled, allowed the appeal and so far as the compensation and withdrawal of plan for the suit, as per schedule appended to the plan, reason for declaration was deemed in favour of the plaintiff. The continuing declaration offered by such courts have preferred the appeal.

3. It is not in dispute that the property for which compensation and withdrawal of plan was concerned and is claimed by the plaintiff belonged to Hazari. It is also not in dispute that upon Hazari's premature death there were three children, one of Mahabul Singh to which Hazari bequeathed one of Agar Singh to which

the plaintiff belong and the third one Ganga Smiti. It is also not in dispute that Hazari Singh was possessed by defendant Agar Singh & Ganga Smiti had agreement. Agar Singh appear from the pedigree that was set up. The plan is the same as evidence of Hazari and claimed to be entitled to the compensation and withdrawal of plan in such matters.

4. The defendant appellants stand on 1<sup>st</sup> second appeal, 1<sup>st</sup> that Lalla Singh alias Ganga Smiti appeal No. 2 is the son of the daughter of Hazari, namely, Dahan. The further stand is that Lalla Singh is a son of Hazari, pre-terminated from his Ray and consequently, a son of Hazari was entitled to the property left by Hazari and are the plaintiff who are entitled. From further evidence submitted, it is also dispute that the property in respect of which compensation and withdrawal of plan is claimed was the property of Hazari.

4. The first point that must arise for consideration is whether Lalla Singh alias Ganga Smiti is the son of Hazari's daughter, so to have any interest in the property left by Hazari. It is accordingly, that as the evidence submitted that Lalla Singh alias Ganga Smiti admitted that he is not Hazari's daughter's son, and further admitted that he has no interest in the property in suit. The only that is compensation, not also have that. Appellant Lalla Singh Ganga Smiti stand on 1<sup>st</sup> the application 14, C2 before the trial court said for having made his earlier written statement as well as the compensation. Another was laid upon the admission of application 14, C2. I may refer to the same in the compensation (a) 1<sup>st</sup>, 2<sup>nd</sup>ly, appellant Lalla Singh Ganga Smiti and the plaintiff jointly it was stated that there may be deemed appropriate declaration concerned and the defendant concerned and the plaintiff may or will have their own view and the defendant concerned to see the daughter's son of Hazari, not for mother's son, daughter of Hazari and was also considered the plaintiff stand 1<sup>st</sup> admitted themselves of the plan in suit and they are entitled to the compensation and withdrawal of plan. The compensation was duly withdrawn the court in the application 14, C2 it was merely mentioned the applicant mother, Dahan, was the daughter of Hazari and the applicant is his son and is entitled to the entire property

\*Author (author) and Ravi Raj Singh (author) is L.R. and other appellants; *Ravi Raj Singh* and other respondents.

of Hassan Singh, and hence the date of the written statement the plaintiffs learned was wrong. The applicant and his two sons were then influenced and given suggestions obtained by agents as to the applicant's name and papers and also advised to sign them before the court and under independent questioning in the court, as the plaintiffs and persons from from the applicant's education, subsequently discovered a fraudulent physical copy and the written statement in question was not filed by the defendant and was executed by a third defendant and the compromise also was subsequently shown before the compromise be cancelled and the defendant be advised to withdraw the written statement. It is noteworthy that the applicant (H) C2 is also concerning the particulars of fraud while the law requires that the particulars of the fraud act to be specifically pleaded. It is also clear as to how another affidavit was executed, while was the defendant given some information Lalla Singh, how the defendant Lalla Singh acted in the before of the plaintiffs and to look to us. That being the parties the finding of fact of the first appeal is clear that the compromise is binding upon the parties to the compromise and that the written statement and the admissions made therein cannot be withdrawn. It may also appear that fraud by material admission into the court record by the applicant in appeal on (H) C2 is not barred out. The compromise was verified in presence of the court and was signed by (H) C2 and the court would not enter in that compromise also the very admission made in the written statement were repeated and affirmed. When this is the position, the first appeal court was justified in its finding.

3. It is significant in any case the court should have allowed the filing of a fresh written statement. It was unable to agree with such a stand. The parties cannot file a compromise written statement. Once a written statement has been filed in court, only an amendment can be sought under O. 6 R. 17 C.P.C. if permissible. Finally, there was no amendment application as such and the proper way for withdrawal of the earlier written statement, and, secondly, very attendance taking a compromise plea by withdrawing the admissions made would also not be permissible in law.

4. The learned court in the application also reported that in view of the delay and was disclosed, the compromised court was still under O. 23 R. 3 C.P.C. It was considered such application and it do not find any basis as to O. 23 R. 3 C.P.C. courts provide statutory and under a withdrawal, permit and further to be disclosed the court should be such agreement, compromise or withdrawal as to the court and still give a decision accordingly. It is also pointed out that, under the party claims and the circumstances that admission of statement has been given in the court shall include the admission that the findings of the first appeal court are not very express. I have also dealt with the relevant findings and I find that the compromise, namely, it is not in fact also duly verified by the court and the applicant (H) C2 did not contain any details of the alleged fraud, misrepresentation, undue influence etc. and the applicant (H) C2 could not find favour and had to be rejected and consequently, the admission in the written statement will be binding upon Lalla Singh and Gurbak and the compromise also will be binding and Lalla Singh and Gurbak therefore not being the partners of Hassan Lal, would not have any interest in the compensation or reimbursement grant.

5. The next point that would arise for consideration is the interest of the widowed Hassan's daughter in law, namely, Gauri. It is a common ground that in law pre-deceased Hassan's widow after the intestate in 1937 widow herself goes to court to claim the share and even now widow will have a right of the now pre-deceased the father. But all such interest would be created only after intestate of 1937 is discharged and Hassan died in 1933 as per death certificate (Ex. 1). According to the nature of the intestate in 1937 widow of the pre-deceased son had no interest other limited or absolute in separately property and consequently, Hassan's widow and Hassan's son's widow could not have any interest in the landed property of Hassan. As there was no division of the property in the intestate, namely, the plaintiffs could interest in such estate.

6. It was next urged that in the name of Gauri was recorded when the Zamindari Abolition and Land Reforms Act came into

been said even earlier: it is the wife who has entitled us, compensation and rehabilitation grant. Believing in the correction was placed upon S. 32 of the U.P. Transition Act and Land Reform Act, an article it has been held that such order, in the regard of rights prepared or received under U.P. Act No. 3 of 1955 for the previous agricultural land shall be for purpose of acquisition and payment of compensation under the U.P. Act, be directed to be described correctly the right, title and interest of an owner in the land subject to exception under S. 45. It would be found that under some subsequent nature procedure for their compensation and rehabilitation is provided and then further be provided for the purpose of release of the land compensation and rehabilitation service subsequent there is a provision for objection as or more regularly only and S. 45 provides for appeal and then S. 46 and 47 before later dealing with appeal. Under S. 46 the scope of objection limited to one question which will be proved —

Section 46(1) The order under sub-section (1) shall not be made unless all persons interested including a person who claims that the name of the intermediary is a person if any there are interest in which such person is entitled interest in a representative capacity or in the capacity of a holder of a joint Hindu family to appeal and file objection upon such statement or will within a period of two months.

Provided that no objection on the ground that the intermediary is entitled to acquire or lease land or part of the estate or it was entitled to any share or part thereof shall be maintained except where it is on any ground mentioned in the proviso or in a circumstance or any or under S. 32 or 33.

Transition and proprietary rights such title and title of such parties happened to be determinable by the civil court and keeping this in view S. 34 was enacted laying down that subject to S. 32 and 33 or S. 46 which rendered an order under S. 45 to be a decree which shall affect the right of any person (including his claim in respect of any share or part thereof) by that person or that in the court having jurisdiction. It would, then appear that S. 32 concerning proceedings S. 33 and also the 45 or 46 are all overlaid by S. 46 and in

that case it is right to say, create the present controversy that that given fully thereby to guide the court with one, not possible, in and in the interim, and the wrong rights being a result. Civil court will be competent court and would be fully competent to determine the right title or interest of the party in or with a land, consequently the right to compensation and rehabilitation grant was in respect of a decree. That being the position, the court could determine the question and there is an independent finding respecting all say, *inter alia*, under U.P. Transition Act and Land Reform Act, will say the court, all in all situation. A person to the contrary said in order A, regard rights, then grant it to give to the person who is holder in relation to compensation.

8. The next is to say in case the law was found by the court. It was argued that the limitation was not running when Transition Act was in force and the Limit Act came into force in 1963. S. 32 Section 32 however would be an amendment, in fact, because the court itself is concerned with being appropriate, necessary or, indeed, rather more than one would have been an agency where a son a father and court will be an exception provided in 74 to the Transition Act and Land Reform Act. At the time the defendant could say that the limitation may not running when the Compensation Officer was finally determined the matter with all of the U.P. Transition Act and Land Reform Act, but that, it is not enough to record to show when the stage has reached and when was the matter finally determined by the Compensation Authority. That being the position, the court cannot be time-barred, apart from that, the compensation and rehabilitation grant, as it argued by the respondent's Counsel, is with the Authority right and when that is the position, it will be open to give a declaration unless clear will not be time-barred.

9. I therefore, after considering various arguments argued, do not find any threat in the second appeal and the second appeal is dismissed with costs to the successful respondents.

*Appeal dismissed.*



Consolidation further holds that the Settlement Officer Consolidation after holding that the issue was not fully referred, erred in granting Azusa rights to the said plot under permission. And with these findings, learned Deputy Director of Consolidation ordered that the matter of plot area be not recorded as Azusa owned land. I find the order in the same able, petitioner as Azusa against the respondent Azusa tried by the order petitioner has filed this writ petition.

3. Learned counsel for the petitioner urged that writ of appeal or revision was filed by the Queen Saliba to the Hon. Nagar Palika Balamper, Sri Har Gur Chaur placed reliance upon a Full Bench decision of the court in *Jose Huan v. Dy. Director of Consolidation* (Nos. 1077 All MC 1) wherein it was held that the Consolidation authorities can rely upon the name of the Queen Saliba or the State Government to be registered when they find that there is no other title holder and that under the law, the land has vested in the State Government and thereafter Queen Saliba, even though the Consolidation or the Queen Saliba has been filed as a dispute.

4. As against the learned counsel for the opposing party Hon. Nagar Palika Balamper, Sri Har Gur Chaur placed reliance upon a Full Bench decision of the court in *Jose Huan v. Dy. Director of Consolidation* (Nos. 1077 All MC 1) wherein it was held that the Consolidation authorities can rely upon the name of the Queen Saliba or the State Government to be registered when they find that there is no other title holder and that under the law, the land has vested in the State Government and thereafter Queen Saliba, even though the Consolidation or the Queen Saliba has been filed as a dispute.

5. In the view of the above said Full Bench decision, I do not find any assistance can be drawn in the learned counsel for the petitioner from the decision in *Andrés case* (1975 All LJ 584) except in so far as it was observed that the land in dispute is owned

vested in the name of Queen Saliba in the latter case. In the present case, however, the land in dispute was recorded Nagar belonging to the Queen Saliba and in such a case of the Full Bench decision in *Jose Huan* case (supra) I find that the Deputy Director of Consolidation could not be impugned on the ground that the land in dispute is considered to be recorded in the name of Queen Saliba by setting aside the order passed by the Settlement Officer Consolidation in which the petitioner's name was ordered to be recorded as Azusa owner. The land in dispute was hilly and water topped area and as such no Sordan rights could be claimed in such a land. Petitioner has failed to show in his case all the alleged facts of All MC 1077. A finding has been made in the order that the issue has not been proved or has been evaded by a dishonest person on behalf of Balamper Balamper a was duly registered and as such the petitioner could not be granted any right on the basis of the issue. Thus the order passed by the Settlement Officer Consolidation was not wrong and petitioner was not a real title holder. The land in dispute belonged to the Queen Saliba and vested in Nagar Palika Balamper. In the view of the matter I find that the Deputy Director of Consolidation has committed no error in setting aside the order passed by the Settlement Officer Consolidation by which Azusa rights were granted to the petitioner on the basis of the alleged facts. When a revision was filed by the petitioner against the order passed by the Consolidation authorities their judgment and orders came on properly and the Deputy Director of Consolidation could therefore hear and decide the case on merits with regard to claims of parties in respect of the land in dispute. Even if no revision was filed against the order passed by the Settlement Officer Consolidation, I find that the Deputy Director of Consolidation is a person of power under S. 40 of the U.P. Consolidation of Holdings Act would pass an appropriate order setting aside the order passed by the Settlement Officer Consolidation which was found to be illegal and wrong on merits and to uphold the claim of Queen Saliba and Nagar Palika. Such power would be exercised under S. 11 C of the Act by the Consolidation authorities as held by the Full Bench in *Jose Huan* case (1977 All MC 1) supra. I thus find no assistance in



the officer of order passed by the Faculty Director of Constitution is as to call for intervention by the Court is exercise of power under Art. 126 of the Constitution.

- d. The law person by grades and marks is accordingly dismissed. (Article 126-128).
- Parson (dismissed)

## 1984 JUL. 1. 1 140

B. N. SMITH AND J. S. DUBOY JR.

Anastasia Maria (Parson) = University of Alghabab and another Respondents

Civil/Case First Phase No. 1076 of 1984 (D. 12-9-1985)

Alghabab University Act 3 of 1973, S. 27 — Alghabab University Rules for admission to LL. B. Course, R. 27 — Deduction of marks in cases of candidates profiting during winter year — Proper marks — Disproportionate marks can be deducted only for those intervening candidate years during which candidate did not avail opportunity of sitting admission to LL. B. Course after graduation.

In terms of S. 27 governing admission to LL. B. Course clearly it was inherent in the case of fresh graduates full marks obtained by them in the Bachelor's degree examination should be taken into consideration in cases of candidates profiting during winter admitted year. The total marks obtained by them are to be reduced by 5% in respect of each such candidate year following the candidate's first attempt of which they are to be treated as fresh graduates which they could have sought admission to the LL. B. first year course. In other words 5-per cent marks can be deducted only for those intervening candidate years during which a candidate did not avail opportunity of sitting admission to a particular course after his graduation. Their case for admission to LL. B. Course had therefore to be considered on the basis of the marks so ascertained. (Para 7)

Where the bachelor's degree examination was held in respect of an applicant seeking admission to first course and in the year in which a student have been held but in the

subsequent year and he sought admission after a lapse of two candidate seasons after the examination only 10% marks and not 15% marks could be deducted from his total.

(Para 8)

Yusuf Sarraf for Petitioner; Shamsud Din C. Mead for Respondents

B. N. SMITH — Aggrieved by the action of the University of Alghabab is not appearing before the LL. B. course for 1984-85 session pursuant Anastasia Maria has approached the Court for relief under Article 126 of the Constitution.

2. After the petition was presented on 16th July 1985, Sri Sand Gupta, learned counsel for the University took issue from the Court for admission with action from the University and placing support of view before the Court. Although the University has not filed any affidavit it has given necessary instructions Sri Gupta, who has placed its point of view before the Court. Inasmuch as the petition can be disposed of on the basis of various facts regarding which there is no dispute between the parties we are unable to consider it of parties proceeding to argue final orders in the petition at the preliminary stage itself.

3. After the petition was passed her 25 intervention examination in the year 1979 she joined the B.A. Part I year class of the University in the first part of that year year in normal course. Final examination for the said course should have taken place somewhere in the months of March/April 1981, but due to various reasons including of the last examination was delayed and it actually took place in the month of March/April 1982. The petitioner passed the said examination securing 177 marks out of 200 marks. Thereafter she passed in A. Philosophy course for the year 1981-82 session. Admission in respect thereof had not been delayed. The bachelor's examination for the said B.A. course is held should normally have taken place in the month of March/April 1983 eventually took place in the month of January 1984 and the result thereof was declared in the month of April 1985.

4. After appearing in the B.A. (Final) Examination the petitioner applied for admission to the first year course of LL. B. for the year 1984-85 in the month of January

1957. Admission to the said course was to be made on the basis of marks obtained by the candidates in their graduation degree examinations. Although the last candidate accepted by the said LL.B. course had merely scored 462 out of 900 marks in the B.A. Examination the University did not admit the persons who had scored 527-900 marks in her B.A. Examination.

2. On behalf of the University, it is not disputed that according to the LL.B. Examination course table made on the basis of marks obtained by the candidates in her Bachelors Degree Examination subject known as Rule 27 of the Regulations for the LL.B. course, the following is the rule:

"7. For admission to any course a fresh graduate student is given to fresh graduates (after 3 years) of previous year and to graduates of a particular year that graduates of the year preceding it.

Provided that a candidate who has graduated one or more years prior to fresh graduates may be considered for admission subject to a suitable discount in the rate of 5% of reduced mark for each academic year elapsed since the year of his graduation.

It was urged that the petitioner was graduate of the academic year 1954-55 (she was a fresh graduate in respect of admission to the LL.B. course for the academic year 1955-56) and her admission to that course could have been considered on the basis of the marks obtained by her in the B.A. Examination. If this single admission to the 1955-56 LL.B. course for a candidate for the purpose would have been computed after deducting 5% marks from one of the total marks scored by her, likewise a deduction of 15% marks for her admission in 1955-56 course and that of 10% marks for her admission to the 1954-55 LL.B. course had to be made. So computed, the petitioner will be deemed to have secured 447.58 marks only. Inasmuch as the last of the candidates admitted to the said LL.B. course had secured 458 marks, petitioner claim for admission made based on the marks obtained by her in her B.A. Examination cannot be considered.

4. Learned counsel for the petitioner contended that the University has misinterpreted and misapplied the provisions of Rule 27 mentioned above and it has erred

in computing for purposes of admission to LL.B. course the marks obtained by her in her B.A. examination. According to her correctly computed, it will be found that she had secured more marks than those secured by the last candidate admitted by the University to the said LL.B. course and that in the year 1954-55 the University had not yet fixed a minimum percentage for

7. Rule 27 as set above clearly postulates that admission to the Graduate course (including the year) be made on the basis of marks obtained in the Bachelors degree examination for the previous three graduates are to be preferred in preference of previous year and graduates of a particular year who performed the greatest of the year preceding the year in the course. In respect of fresh graduates, it is the Rules themselves that a student who pass the Bachelors degree examination and thus become eligible for admission to the post graduate and LL.B. course must not exceed due to the concerned year graduate or LL.B. course was made and the expression "academic year of graduation" means the academic year in which the concerned candidate has actually graduated. The method of giving such preference had done in previous Rule 27 is that in case of graduates who become eligible for seeking admission to the next year course during any academic year prior to the academic year of fresh graduates, total marks obtained by them have to be reduced by 5% for each such year elapsed after the academic year in respect of which they were deemed to be treated as fresh graduates when the making of the Rules. In view of the rule clearly it is that whereas in the case of fresh graduates, full marks obtained by them in the Bachelors degree examination should be taken into consideration, in case of candidates, preference should be given to academic year. The total marks obtained by them are to be reduced by 5% in respect of each such academic year following the academic year in respect of which they are to be treated as fresh graduates in which they could have sought admission to the LL.B. for year course. In other words five per cent marks may be deducted only for those concerning academic year during which a candidate did not avail opportunity of seeking admission to a particular course after his graduation. There can be admission to the

LL.B. course had therefore to be considered on the basis of the marks so computed. The finding that the marks due to the respondent candidate were equal to the total marks due out of 150 marks awarded between 1983 and 1984 came to 104 in fact in the following manner:

It must be kept in mind that the respondent LL.B. respondent candidate had not appeared at the annual course the month of September and the month of March/April 1983 holding of such examination was, legally, nullity. The examination took place only in the month of March/April 1984 and during academic year 1983-84 and this statement was declared null and void. The petitioner had thus actually graduated during the academic year 1983-84 which, for the purpose of the rule, has to be treated as the academic year of the graduate. She was a first graduate in respect of the admission to the LL.B. courses since during the academic year 1983-84 her request for admission to such course of study had to be registered on the basis of the marks obtained by her in the B.A. Examination without any deduction. Her request for admission to such course, it made during the academic year 1983-84 had to be considered then according to marks from the total marks obtained by her in the B.A. Examination and this made during the academic year 1983-84 by deducting only 10 marks from the total marks obtained by her in the B.A. Examination. As the petitioner made the application for admission to the LL.B. course for the 1984-85 session at the results of January 1985 it is during the academic year 1984-85, she, however, was not qualified in considering her request for admission to the LL.B. course after deducting 10 marks from the total marks scored by her. In the circumstances, it could be seen that the total marks obtained by the petitioner in her B.A. Examination in the year 1983-84, by deducting the total marks obtained by the petitioner in her B.A. examination after her personal admission in the 1983-84 LL.B. course, came to 94 (100-6) and thus the total marks scored by the respondent candidate referred to the total LL.B. course were only 94; the petitioner marked higher than 94 in every and was clearly, entitled to admission to the said course.

It is the result, the petitioner stands and is allowed Respondent Law entry is directed to admit the petitioner to the 1984-85 LL.B. course.

*Practical allowed*

1984 ALL. L. J. 155

ON APPEAL AGAIN

*Item Detail and author:* Appellate, Ravi Kishore and subject: Respondent.

*Second Appeal No. 205 of 1974, Dr. 24.4.1975.*

**Civil P.C. 23 of 1974, O. 26, R. 4 — New case — Suit for declaration of title and recovery of possession — Both parties claiming such a title and possession of well defined and clearly demarcated can land as a whole — Court cannot pre-judging that not land partly belongs to the plaintiffs and partly to defendants.**

*(Para 3)*

**B. D. Upadhyaya, S. M. Sanyal and C. Prasad, for Appellants; P. N. Tripathi and B. S. Tripathi, for Respondents.**

**REQUIREMENT —** This is a second appeal from a judgment of the first instance court and decree (Dr. 4-11-1973) passed by the 1 Temporary Civil and Sessions Judge, Jaipur. The plaintiff respondents filed a suit for possession of a portion of the land and recovery of possession from another with her title in respect of the suit land and in the alternative, the plaintiffs also claimed recovery of possession. The suit land has been shown in the Survey map 29/5a as well as map showing thereby by letters A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AB, AC, AD, AE, AF, AG, AH, AI, AJ, AK, AL, AM, AN, AO, AP, AQ, AR, AS, AT, AU, AV, AW, AX, AY, AZ, BA, BB, BC, BD, BE, BF, BG, BH, BI, BJ, BK, BL, BM, BN, BO, BP, BQ, BR, BS, BT, BU, BV, BW, BX, BY, BZ, CA, CB, CC, CD, CE, CF, CG, CH, CI, CJ, CK, CL, CM, CN, CO, CP, CQ, CR, CS, CT, CU, CV, CW, CX, CY, CZ, DA, DB, DC, DD, DE, DF, DG, DH, DI, DJ, DK, DL, DM, DN, DO, DP, DQ, DR, DS, DT, DU, DV, DW, DX, DY, DZ, EA, EB, EC, ED, EE, EF, EG, EH, EI, EJ, EK, EL, EM, EN, EO, EP, EQ, ER, ES, ET, EU, EV, EW, EX, EY, EZ, FA, FB, FC, FD, FE, FF, FG, FH, FI, FJ, FK, FL, FM, FN, FO, FP, FQ, FR, FS, FT, FU, FV, FW, FX, FY, FZ, GA, GB, GC, GD, GE, GF, GG, GH, GI, GJ, GK, GL, GM, GN, GO, GP, GQ, GR, GS, GT, GU, GV, GW, GX, GY, GZ, HA, HB, HC, HD, HE, HF, HG, HH, HI, HJ, HK, HL, HM, HN, HO, HP, HQ, HR, HS, HT, HU, HV, HW, HX, HY, HZ, IA, IB, IC, ID, IE, IF, IG, IH, II, IJ, IK, IL, IM, IN, IO, IP, IQ, IR, IS, IT, IU, IV, IW, IX, IY, IZ, JA, JB, JC, JD, JE, JF, JG, JH, JI, JJ, JK, JL, JM, JN, JO, JP, JQ, JR, JS, JT, JU, JV, JW, JX, JY, JZ, KA, KB, KC, KD, KE, KF, KG, KH, KI, KJ, KK, KL, KM, KN, KO, KP, KQ, KR, KS, KT, KU, KV, KW, KX, KY, KZ, LA, LB, LC, LD, LE, LF, LG, LH, LI, LJ, LK, LL, LM, LN, LO, LP, LQ, LR, LS, LT, LU, LV, LW, LX, LY, LZ, MA, MB, MC, MD, ME, MF, MG, MH, MI, MJ, MK, ML, MM, MN, MO, MP, MQ, MR, MS, MT, MU, MV, MW, MX, MY, MZ, NA, NB, NC, ND, NE, NF, NG, NH, NI, NJ, NK, NL, NM, NN, NO, NP, NQ, NR, NS, NT, NU, NV, NW, NX, NY, NZ, OA, OB, OC, OD, OE, OF, OG, OH, OI, OJ, OK, OL, OM, ON, OO, OP, OQ, OR, OS, OT, OU, OV, OW, OX, OY, OZ, PA, PB, PC, PD, PE, PF, PG, PH, PI, PJ, PK, PL, PM, PN, PO, PP, PQ, PR, PS, PT, PU, PV, PW, PX, PY, PZ, QA, QB, QC, QD, QE, QF, QG, QH, QI, QJ, QK, QL, QM, QN, QO, QP, QQ, QR, QS, QT, QU, QV, QW, QX, QY, QZ, RA, RB, RC, RD, RE, RF, RG, RH, RI, RJ, RK, RL, RM, RN, RO, RP, RQ, RR, RS, RT, RU, RV, RW, RX, RY, RZ, SA, SB, SC, SD, SE, SF, SG, SH, SI, SJ, SK, SL, SM, SN, SO, SP, SQ, SR, SS, ST, SU, SV, SW, SX, SY, SZ, TA, TB, TC, TD, TE, TF, TG, TH, TI, TJ, TK, TL, TM, TN, TO, TP, TQ, TR, TS, TT, TU, TV, TW, TX, TY, TZ, UA, UB, UC, UD, UE, UF, UG, UH, UI, UJ, UK, UL, UM, UN, UO, UP, UQ, UR, US, UT, UY, UZ, VA, VB, VC, VD, VE, VF, VG, VH, VI, VJ, VK, VL, VM, VN, VO, VP, VQ, VR, VS, VT, VU, VV, VW, VX, VY, VZ, WA, WB, WC, WD, WE, WF, WG, WH, WI, WJ, WK, WL, WM, WN, WO, WP, WQ, WR, WS, WT, WU, WV, WW, WX, WY, WZ, XA, XB, XC, XD, XE, XF, XG, XH, XI, XJ, XK, XL, XM, XN, XO, XP, XQ, XR, XS, XT, XU, XV, XW, XX, XY, XZ, YA, YB, YC, YD, YE, YF, YG, YH, YI, YJ, YK, YL, YM, YN, YO, YP, YQ, YR, YS, YT, YU, YV, YW, YX, YY, YZ, ZA, ZB, ZC, ZD, ZE, ZF, ZG, ZH, ZI, ZJ, ZK, ZL, ZM, ZN, ZO, ZP, ZQ, ZR, ZS, ZT, ZU, ZV, ZW, ZX, ZY, ZZ.

\*Agreed judgment and decree of S. N. Sahay, 1st Temporary Civil and Sessions Judge, Jaipur (Dr. 4-11-1973).

in the map 28 Ka. The rest of the portion of the suit land, that is, for purposes to be decided. The alternative relief of possession was not allowed by the lower court, as the lower court found that the plaintiffs were already in possession of the land in respect of which the suit was decreed. Part of the suit was decreed in its entirety in respect of the whole suit land was not decreed. The plaintiffs first appeal before the District Judge and the defendants performed appeal to the suit was decreed in respect of a part of the land by the learned District Judge. Both the cross appeals were decided together in the learned appellate court. The learned appellate court modified the decree of the lower court as it is decreed the suit for perpetual possession in respect of the larger suit share by letters G H S P A B C D in the map 28 Ka. The parties mutually agreed in "Cautious" before and thereafter District Judge at the map 28 Ka. During modified to the judgment and decree of the trial court, the learned appellate court accordingly decreed both the appeals.

3. Aggravated by the judgment and decree of the learned appellate court, the defendants appellants have filed the appeal in the Court. I have found the learned account for the parties in length and have carefully perused the judgments of the courts below. I find a number of errors in the orders of the courts below. The suit land according to the order of the lower court has been clearly shown in red colour and by the letters A B C D E F G H S P in the map 28 Ka. Both the parties in the suit stated the same land belonging to themselves. So the question for consideration before the courts below was whether the suit land shown in red colour or not and described by letters A B C D E F G H S P in the map 28 Ka order led, i.e., to the plaintiff or to the defendants. And both parties saw the lower court decree the suit of the plaintiffs only in respect of a portion of the land as per. It came in the defendants that a part of the suit land belonged to the plaintiffs and a part belonged to the defendants. From the judgment of the lower court it is clear that small portion belonged to the plaintiffs and small bigger portion belonged to the defendants of the suit land. In appeal, the approach of the learned appellate court was, also the same as that the appellate court modified the judgment and decree of the lower court, observing that the plaintiffs

were owners in possession of slightly a bigger area of the suit land shown by letters G H S P A B C D. The result is wherein the lower court decreed the suit for perpetual possession in respect of the larger area of the suit land, the learned appellate court added some more area of the suit land in the decree. After the judgment and decree of the courts below, the result commonly known that the suit land was divided into two portions, one portion of which was held to have belonged to the plaintiffs and the other portion to the defendants. It is the approach of the courts below which is, in essence, a general principle. This is the result which is unambiguous and clearly described in the map 28 Ka and which both the parties claimed their exclusive title and possession in regard to the same. Thus the question for consideration was whether the suit land is whole belonged to the plaintiffs or to the defendants. By the judgment that the suit land partly belonged to the plaintiffs and partly to the defendants, the courts below have made out absolutely a new case which was not set up by either party. The point is whether a court is empowered to set up a new case. In my opinion the said answer of the question is in negative. When both the parties claimed their exclusive title and possession in the suit land well defined and clearly demarcated then the duty of the court is to make an appraisal of the evidence led by the parties with regard to the entire suit land and make a decision whether the suit land belonged to the plaintiffs or to the defendants. The approach of the courts below is erroneous inasmuch as it gives rise to an erroneous case which is not coming to the appellate court that has been set up by the parties. It is not a case like the suit land partly belongs to the plaintiffs or partly to the defendants. The case of the plaintiffs was that the entire suit land was their land and their land belonged to them. On the other hand, the defendants claimed that the suit land was partly, both the parties either wholly possessed. The courts below have made out a new case which is necessary in the appellate court, at the parties. It is all the considered view that the judgment and decree of the appellate court deserves to be set aside and the matter has to be remanded to the lower court for being redrafted.

4. Both, civil I in appeal is allowed, and judgment and decree of 28 Ka 11 (S) passed

the High Income appellate court, was not made and the case is represented in the lower court with instructions that no appeal of the verdict of the parties and taking into consideration the facts and circumstances, respectively, it will record a court finding whether the plaintiff or the defendants are entitled to the suit land above 100, not owned and disowned by letters A, B, C, D, E, F, G, H, I, J, K, and the map 29 Ka, and take into account the suit in the light of the pleadings made above. The court will state the ultimate nature of the suit.

Appeal allowed.

1986 ALJ 1, 2 189

B. T. YADAV J

Manu & the Siddharth Sugars, Sweets, Pastries & Adik's Chamber (Chennai) - Gonsalves Division and others, Respondents

Civil/Misc. Writ Petn No. 105 of 1985 Or 249/1985

(A) U.P. Zamindari Abolition and Land Reforms Act (1 of 1955), Sec. 223, 225A. - **Enacted under** - Order of Sub-Divisional Officer granting permission to lease of certain.

The word "proceeding" already means an action or law, a process, or an act done by an authority, a negative action of action taken for doing something, a previous action, a step in an action. (Para 13)

When the Sub-Divisional Officer granted permission to lease effected by Land Management Committee for permission was merely a proceeding for sale of lease and when that affected the right of a society or when before the lease was effected granted S.D.O. Inspector Sub-Divisional Court before Court of the Additional Commissioner, a consent against the order was made under order 3, 1954 before the Commissioner and order 3, 1954 before the Board of Revenue 1972 ALJ 605, 1952 ALJ 1285 that on.

(Para 13)

(B) Constitution of India Act, 1950 - U.P. Zamindari Abolition and Land Reforms Act (1 of 1955), Sec. 223-225A. - **Content** - Grant

NO/AD/CHS-16/70 Gonsalves

affirmed by S.D.O. - Order of Board of Revenue granting S.D.O. to initiate fresh proceedings for removal of Babry rights, stayed by High Court - Lease granted during proceedings at that period, without getting order of stay - Order granting lease liable to be quashed. (Para 20)

Cases Reported Chronological Para

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for the system and not sustainable; age are the  
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[illegible]

171 *Power of Board to call in cases* — The Board may, until the receipt of any sum so providing, discharge, for any subordinate agent in which no appeal lies or where no appeal lies, but has not been previously called in, a subordinate agent concerned. —

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We do not intend to conduct a pre-licensing review of any

4.1 Volume varied as the number of participants  
 (significantly or not) increased; the third  
 was just made under the case of a double  
 10

<sup>†</sup> The procedures for Division follow the Commission on Acid Contaminants guidelines reported under 5.10(a).

It is accordingly, evident that the Board has not exercised jurisdiction to nullify the award of any suit or proceeding decided by any arbitrator or court. In the wrong case, possibly the appeal granted by the Self-Insured Officer at the time of Director of Insurance Mr. Manning's dismissal in the instant case, it has to be ascertained whether the order granted by the Self-Insured Officer appearing before the said Director of Insurance in terms of response No. 14-15 is in terms of response No. 14-15 is a proceeding in law and whether that proceeding has affected the rights of the employees.

[illegible]

■ **1994-95** *Journal of the National Dictionary of Legal Terms* is a new, pioneering quarterly map across and proceeding in an increasing degree of a legal terminology study. It contains a list of 100 legal terms and their meanings, and is a valuable resource for legal scholars and students. It is published by the National Dictionary of Legal Terms, 1000 10th Avenue, New York, NY 10018-1000. For more information, contact the National Dictionary of Legal Terms, 1000 10th Avenue, New York, NY 10018-1000. Tel: 212-691-1000. Fax: 212-691-1001. E-mail: [ndlt@ndlt.org](mailto:ndlt@ndlt.org). Web: <http://www.ndlt.org>. The journal is published quarterly and is available in both print and electronic formats. It is a valuable resource for legal scholars and students. It is published by the National Dictionary of Legal Terms, 1000 10th Avenue, New York, NY 10018-1000. For more information, contact the National Dictionary of Legal Terms, 1000 10th Avenue, New York, NY 10018-1000. Tel: 212-691-1000. Fax: 212-691-1001. E-mail: [ndlt@ndlt.org](mailto:ndlt@ndlt.org). Web: <http://www.ndlt.org>.

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(7) Where the reproduction under S. 100 of the Act has to be construed, the words of the section should be correctly interpreted. It would not be advisable to suggest. *Centre for Studies Ltd. v. The Director*, in pages 64 and 65, has observed.



1966 AIL, I, 2 (99)

H. N. SETH AND A. N. VARMA, II

*Agreed Karna Commission and others Petitioners v. Karta Upadesh March Samiti, Tahsil of Mandla, Respondent*

Civil/Misc. Writ Pet. No. 5173 of 1965 (2-4-66)

L. P. Karta Upadesh March Samiti (Pls. v. 1964/5-27 = Market Committee = Power to levy and collect market fee — Goods are meant only passing through committee area — Committee cannot levy and collect market fee on such goods — Market Committee also cannot insist on production of sale pass issued by the Committee when they were purchased — Production of bills, bills, Receipts or Receipts commercially or paper is sufficient to prove goods being in transit.

(Para 5, 10)

*Subject Dated and Dated Dated for Petitioner Standing Counsel for Respondent.*

A. N. VARMA, I. — The petitioners who are wholesale dealers in Karna goods, have claimed by means of the petition, the levy and collection of market fee by the respondent Karta Upadesh March Samiti, Tahsil (Respondent) referred to as the respondent March Samiti on the Karna goods sold to respondents to various markets. They have prayed for a writ of mandamus directing the respondent March Samiti not to levy and collect market fee from the petitioners on the Karna goods purchased from them in the market area of Mandla Samiti, Agrod which are being carried by trailers to various destinations outside the market area of Mandla.

2. Shortly stated, the petitioners claim that wholesale dealers who purchase Karna goods from various Samitis like Gupar, Rajpura, Sata, Purgu and Andia Pruthi, etc. trailers to Mandla and various other places, the fact that the petitioners trade by a bill with a bill of lading of goods outside the market area of Agrod. They do not under purchase from any agricultural producer in the market area of Agrod. In the usual course

of business after having imported the Karna goods from Agrod, the said goods are sold within the market area of Agrod. The petitioners contend that such sales to small dealers within the market area of Agrod are not taxable in market fee and a dispute has already been pending in that behalf between the petitioners and the Agrod Samiti in Sata. They further claim that these trailers who purchase Karna goods from the petitioners are long-distance agricultural commodities like Sata, in the district of Mandla, etc. all falling outside the local limits of the market area. Sata, in fact, which, in the course of their journey, pass through the market area Sata. The trucks, drivers carry bills, bills and receipts indicating the fact that the purchases have been made within the market area of Agrod March Samiti and are loaded by trailers outside Mandla Samiti, Sata, and that the goods are merely in transit through the Mandla Samiti. The officers of the Sata March Samiti, however, by a bill stopping these trailers in the Mandla Samiti Samiti and levy and collecting market fee as well as imposing a fee on an assumed basis on moving these goods to various places purchased from the market area of Sata, Sata, ignoring the process of the trucks, drivers that the goods are merely in transit having been purchased within the market area of Agrod for being transported to places outside the Mandla Samiti, Sata. The officers also refuse to take into account the bills, bills or receipts indicating these trucks, drivers in support of their protests and are insisting on the production of purchase of Agrod March Samiti despite the affidavits supplied to them by the trucks, drivers that no market fee was levied by the Agrod March Samiti in respect of the goods in question and that, therefore, none has been paid.

3. On the questions set out above the contention of the petitioners is that the levy and collection by the respondent March Samiti on the Karna goods purchased from the petitioners which are merely in transit through the market area of the respondent March Samiti are wholly incompetent and without any authority of law.

4. A lawyer affidavit has been filed on behalf of the respondent March Samiti from which it is apparent that the dispute about the

RC/LC/1044/65/MPT

1966 AIL, I, 1/13 II (2)

buy of market for on the permanent records on an assumed basis. The burden of the respondent's uncontroverted affidavit that such the respondents do not produce any gain paid of the March Sams, Agre was established beyond that the task, respondents have not taken place within the market area of Agre March Sams but they have taken place within its own market area and hence might be market for it, it is the court's affidavit is a further support that in the foregoing the task did not produce any bill or bill, etc. in the respondent March Sams began in support of their claim that the goods are in market from Agre in other places, namely March Sams Salsado and secondly, their bill, bill and amount are entirely different and unusual in point of the fact that the goods were purchased within the market area of Agre so that they are in place in place within the market area of the respondent Sams. According to the respondent, the only acceptable proof of the statement that the goods have been purchased within market area of Agre March Sams would be the gain paid issued by a dealer in advance the respondent is required to demand and collect market fee from the purchaser.

5. For the petitioner it was contended that the demand for the production of the gain paid of Agre March Sams by the respondents and on the failure of the respondents to produce the same, the levy and collection of the market fee under goods sold by the petitioner are wholly unsupported by any statutory provision. It was urged that the gain paid issued by the Agre March Sams under the provisions of the U. S. Code, U.S. Code, March Sams, Adkins and the Rules thereof, as well as the bill, have framed by the March Sams Agre are relevant only for showing that market fee has been paid on the goods purchased within market area of that March Sams and since the respondents are not paying any market fee in the Agre March Sams because of the parallelism of a dispute between them and the Agre March Sams on that Court in the shape of certain was persons, it is responsible for them to produce the gain paid of Agre March Sams. That brings about again, therefore, of the respondent Sams is resting on the gain paid of the Agre March Sams as the sole and only proof of their claim that the

goods have been sold within the market area of Agre in other places and a bill, a bill, an authority of law. It was further submitted that the bill, bill and amount which are produced by the respondents within the market area of Agre and purchased within the market area of Agre and purchased within the market area of respondent March Sams merely increase in place, namely the respondents market area. Consequently the levy and collection of market fee on the petitioner by the respondent March Sams are clearly supported.

6. On behalf of the respondent March Sams learned counsel reviewed the matter taken in the court's affidavit in all its branches. The respondent's counsel submitted that the March Sams Salsado a perfectly valid in light of the market fee on the petitioner as an assumed basis as the petitioner had not furnished the only relative evidence in support of their claim, namely the gain paid of Agre March Sams.

7. Having heard learned counsel for the parties at some length and having given the matter a careful consideration, we are fully of the opinion that the contention raised in behalf of the petitioner is not founded and must be rejected. As mentioned above, the respondents March Sams is levying and collecting market fee from the petitioner on an assumed basis and not on any direct evidence of purchases or sales having taken place within the market area of respondent March Sams and the presumption is founded exclusively on the making of the petitioner and their transportation to produce the gain paid of Agre March Sams.

8. Then in paragraph 4 of the minute affidavits and also in paragraph 4 of the court's affidavit, the respondents Sams claim that it would not accept any other evidence in support of the petitioner's claim than the gain paid issued by the latter. In paragraph 4 of the minute affidavits the respondent Sams

it is submitted that they were having bill, check and amount. "See the other side of the petitioner's that they were liable to pay any market fee on the Agre March Sams on kind of transactions brought into the market area of that Sams. They also state that no gain paid are being issued to them because of that fact. It is said that it

dispute is pending between the prisoners and the Agre Mandi Samiti in that connection. Under the circumstances, the prisoners cannot obtain goods produced and passed on Agre Mandi Samiti which is being received only the respondent 'Mandi Samiti'.

9. This question which falls for consideration, therefore, is, whether if the goods which cannot produce the pass papers of Agre Mandi Samiti for the reasons stated by them are then purchased altogether from establishing that no transportation takes place within the market area of Saidabad area, or, in fact, the goods were brought from Agre to place outside the Saidabad 'Mandi Samiti'. In our considered view, the question must be answered in the negative. Learned counsel for the respondent 'Mandi Samiti' seeks to through the two laws framed by the Saidabad 'Mandi Samiti' and have it entirely unobtainable and not any single provision therein which might indicate that in the absence of pass papers issued by the Mandi Samiti within which the goods may have been purchased, the same must be subjected to the levy of market fee by the respondent Samiti on an assumed basis even if there is other evidence available which might affirmatively prove that the goods are purchased within the market area of another Mandi Samiti and are booked in documents outside the respondent Mandi Samiti. Learned counsel for the respondent asserted two provisions in by-law No. 18 of the bye-law framed by the Saidabad Mandi Samiti but we find the same does not support the contention of the respondent. It merely provides that every transporter or trader entering the market area of the Mandi Samiti shall be required to carry, duly in Form No. 15 and a pass paper in Form No. 24 as bearing the same. This, however, has no bearing on the question whether Form No. 15 and it do not require any particulars to be disclosed which might be relevant for deciding the question whether the goods are merely in transit. There is no reliance therefor for ascertaining the place of origin from where the goods are purchased and the place of destination.

10. In the absence of any specific statutory provision, therefore, we are so ruled provided only the respondent 'Mandi Samiti' should not accept all such documents as are conventionally in vogue establishing the fact that the goods

have been purchased within the local limits only a market area. It, for being carried to those off market area. Based on merits as stated through the respondent 'Mandi Samiti' for being carried to those places of destination. It is our duty of the opinion that the respondent's stand that they would not accept bills, Sales or receipts in support of the market claim that the goods have not been purchased within the market area of Saidabad is unjust, unreasonable and arbitrary. There does not seem to be any valid foundation for the respondent's standing to pass papers of Agre Mandi Samiti as the sole indication of proof of transportation, inasmuch as the goods were merely in transit through Saidabad. The respondent Samiti cannot demand an out system, levy and collect market fee from the prisoners just because they are unable to produce pass papers of Agre Mandi Samiti.

11. The respondent may, however, invoke a procedure for their own facility in getting transit passes or any other like documents such as are in vogue in transportation and other local authorities in other towns or reports of transport of goods which are merely in transit. It already being provided for issue of entry slips and pass papers. It can supplement the same by issue of appropriate statutory documents for carrying of goods beyond the market area to facilitate the traders who, if merely pass through the market area without intending to transact any sale within that market area.

12. In regard to the evidence which the respondent Samiti have already received from the prisoners however we are not inclined to grant any relief to the prisoners inasmuch as there is a serious dispute between the prisoners and the respondent as regard whether or not the transporters produced any bills or Sales at the market. In the counter affidavit the respondent Samiti has accepted that documents were produced by the truck drivers. It further however the respondent still accepts from the prisoners bills, Receipts or Sales and receipts and such other conventionally produce documents which may be relevant for determining whether the goods are merely in transit through Saidabad market area, and shall not insist on the pass papers issued by other Mandi Samiti as the sole evidence of the fact that the goods are merely in transit.

It is the position the parties accepted and maintained. The respondents' demand was a long and self-enforced law of the land, good and bad for the persons in the market area of Mount Samia, Agia to place outside the jurisdiction of the Mount Samia, Sashedah lands on the basis of the respondents' proceedings, power mostly the Agia Mount Samia. The respondents shall be satisfied to their eyes before the respondents.

*Persons allowed.*

1994 AER 1, 1 1994

S. K. DELADA I

Sam Pua and others, Petitioners, District Judge, Muzampur and others, Respondents

Civil Misc. Writ Petn No. 4788 of 1974 (D. 29.4.1974)

[34] Forest Act (36 of 1927), S. 4 - U.P. Zamindari Abolition and Land Reforms Act (3 of 1955), S. 155 and S. 179(b) and (d) - Declaration of land as reserved forest - Land held under patta from Queen Sahib - Claim to declare the reserved forest as unoccupied.

A Notification under S. 179(b) of the U.P. Act was issued by the State Government when, by reason land which remained the State was declared as being vested in the Queen Sahib. The Queen Sahib claimed a patta in respect of the same was possession stamp of a portion is defined and they were recorded in System Control. Thereafter the State issued a Notification under S. 179(b) whereby the land was resumed by the State Government. No objections were raised under (b) 4 under of the Forest Act for the purpose of continuing declared as reserved forest. The respondents put a stoppage raising that they were forests from the Queen Sahib and hence their land could not be declared as reserved forest. The objections were rejected by the District Officer and the Appellate Authority. The writs were granted was filed questioning the constitution of the order of rejection.

Held that the constitution of the writs under S. 179(b) is that the Queen Sahib a derogation of its possession over the things.

NO AD/CA/45-4993

However, the derogation of its possession and the right of management do not satisfy the second strictly taken by it in the course of management of the things. Any derogation entered into by it or any action taken by it in furtherance of its obligation to manage and superintend the things will not only continue, to exist but also continue to bind the State Government on whose behalf it had undertaken to manage and superintend the things. Therefore it is the opinion of management the Queen Sahib satisfied the plea in dispute with the respondents that constitution would have been and wholly satisfied by the respondents of the possession by the State Government of the things, violating the land from the Queen Sahib. AER 1974 SC 3602. Applied. (Para 12)

In proceedings under the Forest Act, the legality or the validity of the proceedings taken under S. 179 of the U.P. Act for declaring the possession as unoccupied cannot be gone into. (Para 14)

[35] U.P. Tenancy Act (17 of 1938), S. 3(10) - "Let for growing of crops" - Meaning of - Actual growing of crops after letting is not essential.

The definition clearly indicates that the expression for which the letting takes place has already to be seen. Two cases are provided even in the first part - one is land let for growing of crops unlike other is land held for growing of crops. Actual growing of crops is not a test qua test or a condition precedent for attaching the phrase "for growing of crops".

(Para 13)

[36] U.P. Zamindari Abolition and Land Reforms Act (3 of 1955), (a. 155(b) and 173) - Powers of Civil Court - No power to interfere with constitution of lease.

The allotment of lease made in favour of a private could not be annulled or interfered with by the Civil Court. The reason is that the Legislature has under U.P. Act provided for a particular lease and not for a lease which is not a lease and is not a lease. (Para 7)

Case Reported Chronological Form  
AER 1974 SC 1946 (1974) 3 AER 1974 1946  
1974 AER 1974 SC 1946 AER 1974 AER 360 1974 1946  
AER 1974 SC 3602 11

ABR 1976 AB 171  
ABR 1980 SC 70.

Sarkisian Rm. by Participants, Standing Counsel for Respondents.

**ORDER** — The participants who claim themselves to be the Section of Management of Land challenge the legality of measures passed by a District Judge acting as an Appellate Authority, under S. 4<sup>th</sup> of the Indian Forest Act 1927 as applicable to Uttar Pradesh (Respondent) referring to as the App. Authority, the appeal and upholding the order of the Forest Settlement Officer (respondent) referred to as the Settlement Officer regarding their objections.

1. Before the stated operations, there were plots Nos 142, 143, 148, 150, 151, 152, 153, 154, 155 and 156. After the stated operations these plots were renumbered as plot No. 161A, area 88 Aghas. This said plot was situated in village Bihari, Pargana Vajepur, Taluk Bahadurganj, District Manager, Thapsi, near at the limit of Uttar Pradesh under S. 4 of the L. P. Settlements Act and Land Revenue Act, 1952 (hereinafter referred to as the U. P. Act). Thereafter a notification under S. 147 of the U. P. Act was issued and the plot vested in the State of India (later on reconstituted as Goa Sahiba). On 28th July 1962 the Goa Sahiba executed a Fataa in favour of the prisoners with respect to a portion of the said plot. On 9th April, 1964, an order of mutation was passed by the Sub-Divisional Officer in favour of the prisoners and they were recorded as Sadaas in the Khataas of 1275 to 12778. By a notification in 23rd December 1965 purporting to have been issued under S. 179(a) of the U. P. Act vesting of the entire plot in the Goa Sahiba was renumbered by the State Government. On 19th January 1967 a notification purporting to be under S. 4 of the Act was issued with respect to the plot. This was followed by a notification on 20th April, 1967 purporting to be under S. 4 of the Act. The prisoners preferred an objection before the Settlement Officer claiming themselves to be the owners of an area of 25 Aghas 11 Bhasa of the said plot. They claimed to be tenants from Goa Sahiba on the basis of the aforementioned Fataa and, therefore, the plot, or in any case the area which was the subject matter of the Fataa, could not be declared as reserved forest. As already

indicated, the objection was rejected. They preferred an appeal.

2. The Appellate Authority recorded the findings. The plot was found on 1st July 1962 and it vested in the Goa Sahiba as such. The vesting of the entire plot in the Goa Sahiba was undone by the notification in 24th December 1965. The prisoners were admitted as tenants over a portion of the plot through the aforementioned Fataa and their names were duly entered in the revenue papers. The application for the confirmation of the title by the Forest Department was rejected on 16th April, 1970 and the appeal preferred by the Department against the said order was also dismissed on 19th February 1971. In 1962 the Goa Sahiba, Bihari had the right to admit the prisoners as tenants over the portion of the plot. The tenure at least of the prisoners was not associated permanently. The Fataa was executed in 1962, the assignment of any of the houses could not be challenged in the proceedings under the Act. This could be done either in proceedings under S. 156 of the U. P. Act or by means of a regular suit. The consequences of the notification in 23rd December 1965 under S. 179(a) of the U. P. Act was that the rights of the Goa Sahiba and the persons claiming through it, including the prisoners, came to an end. The prisoners claimed to be tenants on the date when the notification under S. 4 under the Act was issued. The area of the plot which was the subject matter of the Fataa was not under cultivation in 1962 and thereafter. The portion of the plot of which the prisoners claim to be the tenants did not continue to exist, within the meaning of the L. P. Tenancy Act, 1929 (now to be the enactments provided for in S. 3 of the Act).

4. The last question to be determined is whether the plot was land (possibly) tenanted or forest when a notification under S. 4 of the U. P. Act was issued. In other words, whether on 1st July 1962, the date of vesting, the plot was either land or forest. Under S. 4 the plot vested in the State of Uttar Pradesh free from all encumbrances with effect from 1st July 1972 and the plot, as the notification in 24th December 1965, vested in the Goa Sahiba from the date of the notification under S. 147 of the U. P. Act. The Settlement Officer did not adhere to the question at all. The appellate Authority,

however observed that the plot was formed and as such on 10 July 1967 the same could be said to be done and thereafter to the Glens Salsia. It is acknowledged that, apart from making the entry observation, there is no document as to how and in what manner the plot was considered or being by it. It appears that before the authors in below, the respondent submitted any evidence not produced any material to them, then on 10 July 1967 the plot was a house 10 m wide, 10 m long, despite the fact that the petitioner has a ground that the plot was being on the relevant date apart from leaving the fact and reasoning that it was found in material has been produced by the containing respondents. The Court is invited to take judicial notice of the fact that different conditions under S. 117 of the L.P. Act were applied with regard to land and forest and other things contained in S. 117. During the course of the arguments suggested to have varying Council to find out the purposes of the respondents and to give a copy of the same, but it failed to do so. In the absence of any material the court must take the Appellate Authority, which has a finding, rather to be contained and free to be ignored.

5. S. 3 (4) of the L.P. Act provides that except in Chapter VII and some other provisions, with which we are not concerned, land means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry, which includes permanent and poultry farming. In Chapter VII, S. 117, that provision provides that in any case after the production of the notification referred to in S. 4, the State Government may, in general or special order declare that in any or various cases all or any of the things mentioned therein, which land used in the State under the L.P. Act shall not be a Glens Salsia. In S. 117 these things are mentioned. We are only concerned with the first one, namely, (1) lands whether cultivated or otherwise, except lands for the time being occupied in use building or ground and (2) forest. S. 115 of the L.P. Act provides that the Land Management Committee constituted by Glens Salsia by S. 32 of L.P. Act No. 37 of 1967 shall have the right to submit any petition to the State or any land which is the land under the L.P. Act and the land proposed in the Glens Salsia submitted by Glens Salsia by L.P. Act No. 32 of 1967 to the land has

come with the possession of the Land Management Committee under S. 115 regarding any other provision of the L.P. Act (a) refers to land becoming vacant under any provision of the Act. Therefore we are not further concerned with (a) or (b). We are directly concerned with (c). We have already seen that the definition of land as contained in S. 3 (4) of the L.P. Act has no application to land referred to in S. 117 and we have also seen that a 3.10" land may be cultivated or otherwise. In other words, S. 117 abstracts land rather than land held or occupied for purposes connected with agriculture, horticulture or animal husbandry, which includes permanent and poultry farming. It follows that S. 117 envisages nothing in the Glens Salsia land other than the land referred to in S. 3 (4). And at the same time S. 115 empowered the Glens Salsia to submit any petition to the State which referred to in S. 117. The purpose of the L.P. Act is that the definition of land as contained in S. 3 (4) land has no application to the land referred to in S. 115. The purpose is further clarified when we have a look at S. 3 (4) and provides that, in the Act, unless there is anything expressed in the subject or context the definition as mentioned therein would apply. In S. 115, the subject or context of land is certainly expressed or contrary to the land as contemplated in the definition in S. 3 (4). Clearly the definition of land in S. 3 (4) is not relevant in the context of S. 115. Therefore there is no difficulty in taking the view that even forest land is covered by the expression land and in 14 of Section 115.

6. The Appellate Authority has rightly taken the view that in proceedings under the Act the legality or the expediency of the percentage rates under S. 145 of the L.P. Act for submitting the possession in relation to a portion of the plot is, measuring lands or things in that forest cannot be gone into.

7. Section 14 of S. 115 is the relevant one empowered the Collector and even then responsible Collector to issue the statement and the issue following it. In sub-rule (2) of S. 115 every order made by the Collector under sub-rule (4) has been made final. Of course, the finding is subject to a revision by the Board of Revenue under S. 103. The Appellate Authority, particularly, noted in taking



the view that the different trading factors of the petroleum could be immediately assessed with by the Oil Court. The view under the Legislature in its wisdom that in U.P. Act (proposed for a particular time) structure can be tied to their future share and source offer.

8. In *Saskatchewan v. Canadian Union of Petroleum* AIR 1977 AB 300 (1977) AIR 1222 (1977) a Full Bench of the Oil Court relying upon *Chelchuk v. State of Manitoba* (Prothon AIR 1960 SC 75) has taken the view that —

The last subsection of S 126 of the Saskatchewan Petroleum Act declares that the orders of the Collector are subject to a rehearing by S 127. That the law is not at any time prevailing in a civil court. The order passed by the Collector or any order passed by the Board of Review in a review that agrees the order of the Collector is a finality between the parties. These orders made and maintain the rights of the parties. A similar right cannot subsequently be recognized.

The Full Bench, therefore, has taken the view that the subordinate authority under the Saskatchewan of Holdings Act have no jurisdiction to cancel or set aside a lease or agreement made by the Land Management Committee under S 126. The appeal to the p. accordingly under the Act is void.

9. We have now to examine the impact of the non-observance, caused by the State Government under S 127(a) of the U.P. Act upon the rights of the petroleum, as well as over a portion of the plus. To answer the query the queries should be what has been decided by the State by exercising statutory power under section 127(a). The answer is all in any way of the things concerned in S 127(a) and would be the State. The key words indicate of the petroleum the legislative intent under the right of regulation arising upon the use of the word "and" in S 127 (particularly in the background of the commission of the same word in Ss 4 and 5).

10. Operation of Ss 4 and 5 resulted in the complete destruction of all rights, title and interest of all the petroleum in the things stipulated in Subsections (2) and (3) of S 4 of S 5. Unquestionably, these things must result in the State of Uttar Pradesh from all construction thereby — (the State) because

in absolute terms, S 127(a) of the U.P. Act and under the Land Management Committee is given the general superintendence, management, preservation and control of all the land, lower water, village boundaries, reservation, forests in a holding, growth or stock, fisheries, parks, ponds, water channels, pathways, schools, roads and hospitals and water, under the State. Subsection 127 Subsection (3) of S 127(a) indicates that the control and management of land is one of the purposes of general power of superintendence and management. It is, therefore, implied in S 127(a) that the State Government does not purport to transfer its proprietary rights when it vests the things concerned in S 127(a) upon a corporation. It merely transfers the possession and management of the things for the use being. What amount in S 127(a) again implies in S 126 wherein the State Government, a corporation is given such orders and directions to the Land Management Committee as they appear necessary for the purposes of the U.P. Act. It also provides that shall be bound by of the Land Management Committee and its officers bound to carry out such orders and comply with such directions. Apparently, the orders and directions can be with regard to the general superintendence, management and other duties entrusted to the Land Management Committee with respect to land etc. as referred to in S 127(a). In other words, the Land Management Committee is duty bound to discharge its functions of the general superintendence, management, preservation and control of the land etc. vested in the State. Subsection 127(a) indicates that the directions and orders issued by the State Government. The preservation of the power of the State Government to make orders and directions with regard to the management and superintendence of the things vested in the State is completely destructive of the very idea of the transfer of its proprietary right and interest in the land then by the State Government.

11. In *State of U.P. v. The Nation* AIR 1976 AB 121 a Division Bench of the Court has taken the view that the word "vest" occurring in Section 127(a) merely indicates that an order made by the State Government under the provisions of the only possession of the land concerned in the State. Subsection 127(a)

other local customs in which forest with cultivation is made without any form of ownership status resulting. Therefore, notwithstanding a notification under S. 10(1) of the State Government persons ownership in the land. This view has been affirmed by the Supreme Court in *Mithyasa Singh v. State of U. P.* AIR 1976 SC 1882.

12. Applying the principle as enunciated by the Supreme Court, the ownership of the forests S. 17 and ranges transferred to the State Salha. Therefore, the question of the acquisition of the proprietary right by the State Salha over the land things does not arise. The consequence of the action under S. 17(1) is that the State Salha is divested of its powers over the things. This duty was upon it to supervise and manage the things placed in its hands and the moment the possession of the things is taken back from it by the State Government, it cannot thereafter exercise any right of management or superintendence. However, the deprivation of its possession and the right of management do not actually deprive it already taken by it in the course of management of the things. Any possession entered into by it in any action taken by it in furtherance of its obligation to manage and supervise the things will not only continue in force but also continue in fact the State Government on whose behalf it had hitherto been managing or supervising the things. Therefore, if in the course of management the State Salha acted the plot in dispute with the permission that permission would remain valid and fully unaffected by the termination of the possession by the State Government in the things, including the land from the State Salha. The land was given to the persons by the State Salha while acting in the management of the State Government and the State Government is bound by the act of its agent.

13. Under S. 19 of the U. P. Act all land held or deemed to have been held by, various classes of persons shall be deemed to be owned by the State Government with such persons who shall have no right to take or retain possession in the land as under S. 13 provides that such persons, who, as a consequence of the acquisition of certain, become a Salha under S. 17 in any person who is situated in relation of any landholder in accordance with

the provisions of S. 105 or S. 110 and every person who has any interest superior to the rights of a Salha under or in accordance with the provisions of the U. P. Act or of any other law for the time being in force, shall be called a Salha and shall have all rights and be subject to liability sustained upon a Salha by or under the U. P. Act. We have seen that the State Salha is the purported exercise of power under S. 110 allocated to persons as endowments in a portion of the plot. Therefore, the persons have all the rights and they are subject to all the liabilities which the endowments and Salha under the U. P. Act S. 110 lays down the conditions under which the exercise of a Salha in a holding or any part thereof shall be recognised. In this case, we see the exercise of a Salha without adequate support upon the happening of the events mentioned in relation to S. 110 of S. 110. By necessary implication, the State excluded any other consequence the happening of which was result in the management of the exercise of the Salha. To put it differently, if S. 110 does not provide that the exercise of a Salha who has been, maintained by the provisions of S. 110(1) that is a person, situated in a Salha of the land under or in accordance with the provisions of S. 110 shall be subject upon the termination of the land by the State Government from the State Salha by taking action under S. 17(1) such action shall continue to be maintained for the use of the State Government under S. 17(1). Therefore, the view taken by the Appellate Authority that the rights of the persons in Salha cease to be and upon the exercise of the endowments under S. 17(1) is, purely incorrect.

14. Section 5 of the Act provides that the State Government may designate any land which is for the use being comprised in any holding as a reservation. In the implication to this section is provided that the expression 'holding' shall have the meaning assigned to it in the U. P. Tenancy Act, 1938. The authorities before us have taken the view that since the persons listed to establish that the portion of the plot was even under reservation, particularly in or before the date of the notification under S. 4 of the Act, the same cannot be regarded from being declared as reserved land. S. 37 of the U. P. Tenancy Act, 1938 provides that holding means a

period or periods of land held under one lease, engagement or grant, or in the absence of such lease, engagement or grant under one tenant and in the case of a mortgagor includes the whole area. We have, therefore, to find out the definition of land for understanding the import of the word "holding".

16. Land is defined in S. 3(14) of the said Act as under:—

"Land" means land which is let or held for growing of crops, or for growing land on the passages. It includes land covered by water and for the purpose of growing sugarcane in other portions, but does not include land for the time being occupied by buildings or apparatuses (machines or other things) which are proper means.

So as the definition of land, we are concerned with the last part, namely, land which is let or held for growing of crops. The definition does not mean that the entire area which is being taken place has merely to be seen. Two situations are provided even in the last part, one is land let for growing of crops and the other is land held for growing of crops. Actual growing of crops is not a test but not a sufficient condition for ascertaining the place as the growing of crops. The moment the premises were situated the plot by the State farms under S. 18a of the U.P. Act, they became urban. Obviously the wrong took place for growing of crops in future. The question is clarified if we look to the definition of land in the U.P. Act, in S. 3(14) of the Act land is defined as mean

"Land" means in Ss. 108, 110 and 111 and Chapter VI means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming.

17. In State of U.P. v. Smt. Saroj Devi (AIR 1975 2 All LJ 417, 1 All JTT 50, 1975) the Supreme Court considered the definition of land under the U.P. Act and observed that a bare perusal of the word "land" as contained in S. 3(14) of the U.P. Act would show that it is not necessary for the land to fall within the purview of the definition that it must be actually under cultivation or occupied for purposes connected with agriculture. The requirement of the definition is simply satisfied if the land is let or held or occupied for

purposes connected with agriculture. The urban character, therefore, is not a test and is taking care to see that despite the provisions a continued act of tillage has the plot occupied could be declared as a revenue lease.

18. In the result, the petition succeeds and is allowed. The order of 20th August 1974 passed by the District Judge, Meerut (the Additional Sessions) is quashed. The order of 20th March, 1975 passed by the same Sessions Officer, Meerut is also quashed. The prisoners are ordered to their cells.

Prisoners allowed.

1986 JAL 1 1 201

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Farm Security Ltd. Promoters v. The State Transport Appellate Tribunal L.P. Laxmipati and another (Appellants).

Civil Misc. Writ Pet. No. 2433 of 1974-D/20th May

(1) Motor Vehicles Act (14 of 1930), S. 58 — *Essential of permit* — *Running proceedings themselves*, a truck cannot be included in permit

In view of provisions of S. 58(3) an existing permit holder who has made an application for the renewal of his permit, and he is entitled to a preferential class over others, other conditions being equal. But he can have a preferential class only with respect to vehicle which was included in his permit and not with respect to the route which he desires to be included by way of fresh permit, with respect to the route route to be included for the first time a permit holder will have to compete on equal terms with the other class competitors and the question of his getting any preferential place where will be arise. This provision, therefore, is also indicative of the legislature more than in the scope of the proceedings for the renewal of a permit under S. 58, a truck cannot be included in the permit.

(Para 10)

(2) Motor Vehicles Act (14 of 1930), S. 58(1) — *Three routes* — *Addition of* — *In the absence of a contract with the permit holder*

1986 JAL 1 1 201

If it now comes to an original permit is included, the permit holder should submit separate but valid data on the work, additional for a period beyond the life of the permit itself. It is left to the permit holder to explain to the work added many will be consistent with the life of the permit itself. (Para 14)

**Cases Related Chemically From AIR 1987 SC 489**

L. P. Jadhav, for Petitioner (Waiting Charges), for Respondents.

**ORDER** — The petition is for issuance of an existing permit holder under the applicable whether the relevant Transport Authority has to submit to provide an additional rule in a way, charge permit to percentage under 2. 10 after 10/11/1962 (hereinafter referred to as the Act for the material of that part 1)

1. A permanent stage carriage permit was held by the petitioner on the route Salawal-Sahawal -10, Dabapur and Derasman (hereinafter referred to as the route). In Feb. 1971 Transport Authority renewed the permit of the route between Salawal and Derasman from the permit as, according to it, the said portion formed part of a working route. The petitioner requested to extend the duration of the said portion from its route. The Transport Authority on 10/2/1980 renewed the permit for the portion between Salawal and Derasman only. The petitioner again requested to extend and continued to operate his vehicle on the said portion of the route only during the said portion. The renewed permit was issued on 10/12/1982. The petitioner made an application and prayed that the route may be renewed for the portion of the route between Salawal-Dabapur -10, the original route Salawal-Derasman plus the portion between Derasman and Dabapur. The Regional Transport Authority renewed the permit for the portion between Salawal and Derasman only. In appeal, the Regional Transport Authority ordered that the Transport Authority and took the view that the permit could be renewed only for the portion of the route between Salawal and Derasman.

2. Section 5B(2) of the Act provides that a permit may be renewed on an application made and disposed of as it is made an application for a permit. The reference is

based on the provision. It is contended that the procedure for the grant of a permit is envisaged in rules 11 of 5 (2) having been gone through there is no requirement in the way of the authorities before to issue the permit for the route as provided for and the failure to exercise the provision is void, is thereby not done. The respondent, though contrary, as the first bench cannot be held upon a slight variance. Section 11 of 5 (2) added by Act No. 10 of 1962 provides, inter alia, that when a permit is first renewed after the expiry of the period thereof, such renewal shall have effect from the date of such expiry. Obviously this provision has been no application and application where a permit is being granted for the first time. Section 11 of 5 (2) is a provision that stage carriage permit shall be effective, without renewal for such period, not less than 1 year and not more than two years as the relevant Transport Authority may specify in its permit. The provision is contained in sub-rule 11 and 11 of 5 (2) cannot be remedied with such other it is accepted that in the stage of the renewal of a permit a new route can be introduced. It cannot be the result of the legislature that a permit, the document issued by a competent authority, 5 (2) of the Act, can have two periods of validity. One with respect to the route for which it is being renewed and the other with respect to the route which is being included for the first time by way of a fresh grant. Such an interpretation will not only violate the well known principle of harmonious construction of a statute but will also make the provisions of the Act unworkable.

4. In the instant case if the principle of the petitioner is accepted, then it will be that the permit for the portion of the route between Salawal and Derasman will be effective only after from 10/12/1982, 1982 for a period of three years or less, where, in the case may be, while the route Salawal will be valid for the portion of the route between Derasman and Dabapur for a period of three years or less, where, in the case may be with effect from the date of the renewal for that portion. In any case the permit cannot be made effective for the portion between Derasman and Dabapur with effect from 10/12/1982.

5. Before the addition of rule 11 of 5 (2)

of the Act a matter dealt up before the Supreme Court after the 1968 Act, was a matter of general removal under subsec. (2) of S. 19. It is a continuation of the old permit or should be treated a fresh permit. In the Supreme Court after the submission was accepted under subsec. (2) of S. 19. After taking into consideration the relevant rules prescribed, Pt. 24 issued by the Government of Madras, the Lordship observed:—

...a reading of the relevant provisions of the Act and of the Rules leads inevitably to the conclusion that it involves a continuation of the permit previously granted. The fact that the grant of the renewal is not a matter of request or that it is open to the authority to grant fresh stipulations at the time of the renewal does not, when the permit is in fact renewed, alter its character as a renewal.

(See V.C.R. Industries Ltd. v. The Regional Transport Authority, Coimbatore AIR 1981 SC 484). This case not only fortifies the view taken by me, but also reveals a dearth lack of the arguments of the learned counsel for the petitioner that a renewal can be treated as a totally new but a continuance of permit.

5. The second proviso is subsec. (3) of S. 18 reads:

Provided further that, other conditions being equal an application for renewal shall be given preference over new application for permit.

In a normal situation, an application for the grant of fresh permit or a new permit or a permit for a particular route can also be made when a renewal occurs on that route. In contrast of the expiry of the life of an existing permit. In view of the deplorable situation an existing permit holder who has made an application for the renewal of his permit, will be entitled to a preferential claim over others, other conditions being equal, but he can have a go elsewhere claim only with respect to a route which was hitherto included in his permit and not with respect to the route which he claims to be included by way of a fresh permit. It is agreed by the counsel for the respondent for the first time a permit holder will have to compete on equal terms with the other rival competitors and the question of the giving any preference over other will not arise. This will lead to an anomalous situation. This, however, therefore, is also substance of the

legislative intent. Also at the time of the proceedings for the renewal of a permit under S. 18 of the Act, a fresh route cannot be included in the permit.

7. Through sec. 19 of the permit act the the scheme, which envisage the problem of the road between Government and Private road providers also the petitioner and other persons associated with them can be prevented to operate their vehicles on the portion of the road. The scheme does not address parties being excluded the question of fresh permits are being considered for parties for that portion does not arise. The possible failure in the particular case will not and should not divert us from considering the scheme of the Act and the legislative intent.

8. Subsec. (3) of S. 17 of the Act on admission provides that an application for the renewal of a stage carriage permit is, including a new route or new shuttle service, as if an application for the grant of a new permit. The petitioner claims that each stage of the provision for more than one reason. First, no such request was made by the petitioner before the Transport Authority concerned. No such argument was advanced by and on behalf of the petitioner either before the Transport Authority, or before the Appellate Tribunal. Even in the Commissioner's report no such argument has been made nor was ground to that effect has been taken. This was a matter of an all, as the decision of the two authorities to issue a permit for such that they either acted without jurisdiction or conducted one illegally, much less a permit illegally, at not adhering to the question. Secondly, the aforementioned provision cannot be applied with respect to a permit which has no including life etc. If a new route is an existing permit is included, the permit holder thereof cannot operate his vehicle on the newly added route for a period beyond the life of the permit itself. The life of the permit even with respect to the newly added route will be continuous with the life of the permit itself. In this case, as evidenced above, the permit was valid till 28th Dec. 1982 and the nature of the renewal of the permit came up for consideration before the Transport Authority, on 28th Oct. 1983.

9. The permit holder never made a request for renewal. The second order passed by a

learned Senior Judge of the Court dated 1975. The D.P. is hereby revised.

*Prayer dismissed.*

1986 ALL L. J. 284

V. K. MISBOTSIA, J.

Sr. Jagan Dev, Petitioner v. District Judge, Mandial and another Respondents.

Cad/Mand. App No. 1975 of 1981 Cr. II S.F.P.

**U.P. is law binding (Application of Law, Rule and Criminal Act-III of 1973 S. 24 - Appellate authority - Power of)**

The powers of the appellate authority are co-extensive with that of the Prescribed Authority, and where the appellate authority, on consideration of the material on record, comes to a different conclusion from the one arrived at by the Prescribed Authority, it cannot be said that the order suffers from manifest error of law. It is submission of the Prescribed Authority is found to be based upon relevant material on record, the mere fact that such-and-such reasons given by the Prescribed Authority are not used by the Appellate Authority in its order, cannot render it legally untenable. The order of the Appellate Authority need not, come in close consonance with that of the Prescribed Authority. (Para 1)

**Cases Cited:** Chronological Para 1981 ALL L.J. 100 6

T. P. Ashoka and Ganga Singh, for Petitioner J. C. Bhattacharya, Rajesh Varma, Sandeep Chandra, for Respondents.

**ORDER** — Sr. Jagan Dev, Petitioner is a tenant in an accommodation of which the second respondent, Huz. Jagan Dev, is the landlord, who has the meaning of this term in U.P. Act 12 of 1975. On March 12, 1975, an application was made under section 24 (1) of the Act by her for eviction of the petitioner (the tenant) of the premises. It was founded on the basis that the accommodation in the possession of the landlord was sub-leased for

her needs and living regard to the number of members who reside further accommodation was needed for her. The prayer that the accommodation in the possession of the petitioner be released to her being. The petitioner resisted the claim by pleading, principally, that the accommodation in possession of the landlord was sufficient and that her need was not bona fide.

1. The case set up by the landlord was that apart from himself, also the death of her husband, her son Jagan Kumar, who was married with one Sumita and an unmarried daughter, K. Kankish, were living with her. The petitioner set up the case that it was only the husband and her unmarried daughter who were residing at the landlord and that Jagan Kumar was living in Mandial and carrying on business there.

2. The Prescribed Authority, while on the evidence submitted by the parties in the case, it concluded that the normal number of persons who were living in Mandial, at that time, was two, which included the husband, and her unmarried daughter, K. Kankish. On the finding, he concluded that the accommodation in possession of the landlord was sufficient for her needs and with her finding the prayer for release was rejected.

3. In appeal, the learned District Judge appreciated the evidence submitted before it, the conclusion that number of persons living at Mandial was four as pleaded by the landlord. He also concluded that the accommodation in the appealable landlord was not sufficient for the newly married son Jagan Kumar. Relying on the submission of the Prescribed Authority, the learned District Judge allowed the application for release and granted a month's time to be taken to vacate the accommodation.

4. In a brief and concise detail of the report petitioner that the learned District Judge was in error in concluding that the number of members of the family of the landlord living at Mandial was four. The respondent, further, it that the documents which had been considered by the Prescribed Authority, had not been submitted to her the learned District Judge. The learned counsel for the petitioner had further presented something in the name of the Prescribed Authority from which a copy

appear that at a document filed on behalf of Harjo, counsel retained by the Prerecorded Authority. He referred to an affidavit of the Landlord (Payer) in Article 10 paragraph 11 where, according to the petitioner, there is an admission of the Landlord. The learned District Judge referred to this admission and has drawn a conclusion in favour of the respondent by the Prerecorded Authority. It seems to me that the learned District Judge has overlooked the fact that the admission which was relied upon by the Prerecorded Authority, occurred at the case on a whole document, which was not

4. The second suggestion of the learned counsel is that the Prescribed Authority having come to a conclusion on basis of the report on appreciation of evidence, it is not open to the District Judge to appeal to reverse the same without meeting the reasons contained in the order of the Prescribed Authority. This argument is not sustainable. The power of the appellate authority is not confined to that of the Prescribed Authority and where the appellate authority on consideration of the material on record, comes to a different conclusion from the one reached at by the Prescribed Authority, it cannot be said that the order suffers from manifest error of law. It is here the conclusion of the Prescribed Authority is found to be based upon relevant material on record, the mere fact that each and every reason given by the Prescribed Authority was not by the Appellate Authority in its order cannot make it legally correct. The order of the Appellate Authority need not, as a whole, coincide in most quarters with that of the Prescribed Authority. In *Ramdas Akbar v. Maruthi Narayan Rao* (1982 All LJ 345) this principle has been recognized on the basis of an appeal under section 305 C.P.C. It is in line with justice upon which High Court is exercising its order in exercise of its jurisdiction under Art. 226 of the Constitution.

\* The only difference could be the limited amount of consequence for missing the order placed by the Argentine Authority. The text put into a demand but I leave the matter to those who see a case.

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**Abstract**

W. H. STELLINGSMA, G. C. I. AND  
M. D. ROBINSON, I

Tom Auer Professor's Chair and Vice  
Chair of Finance and Accounting

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U.P. State University, Lucknow, Ind. 226 001 of 1970, S. 381) — *Student member* — First Institute of University of Warsaw (1971), S. 381 (1972) — *European member* — Teaching experience in other University stated in account.

For many this is no surprise to the female staff of the library (11) as a previous project of teaching in a village resulted in another Librarian, named Violet, because of the message expressed in a collage affixed to the Library of Moring April. The message, having been displayed for three years, was removed through the inherent provision laid in the message itself that it "it could not have been accepted to perform any Librarian other than the Librarian of Moring, with an affiliation to college rather than college's Librarian the University. The construction cannot be seen but the words are as clearly seen, placed, covered from the view of entering of the Librarian's collection. (Fig 1)

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H. C. Reynolds and M. D. Singh, for Professor R. D. Macdonald, A. E. Martin and Susan Phillips, for Environment.

**IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR THE COUNTY OF DADE, FLORIDA**

[illegible]

Science in the S.S.V. Degree College, Hapur affiliated to the University of Meerut. The petitioner and the respondent's qualifications were considered for the post. The candidate was recommended by the Selection Committee on Aug. 11, 1975. The Selection Committee gave a period in which the respondent's role should be performed as per Annex No. 1 and the petitioner was absent at the No. 2. The petitioner represented that the respondent's did not possess the minimum prescribed qualifications including experience for the appointment. The Vice-Chancellor, however, gave approval on Aug. 20, 1975 and the Management of the College appointed accordingly the respondent No. 1 to the post. A reference was made to the petitioner under S.O. of the U.P. Government Act, 1973 by e-mailer referred to as the Assistant Committee who reported under the impugned order of May 27, 1975 observing :-

1. In Ram Kaur has also questioned the selection and appointment of Dr. S. P. Singh on ground that he was not qualified for the post. Dr. Singh had ten years teaching experience of postgraduate, fellowship in Military Science. He was fully qualified under Section 11 (1) of Meerut University. In view of these facts it cannot be said that Dr. S. P. Singh was not qualified for the post.

2. Approved the petitioner has approached the Court under Art. 226 of the Constitution seeking the writ of certiorari to quash the order of the Committee.

3. In accordance with S. 20 (1) of the Act, a teacher is appointed by the Management of the College on the recommendation of the Selection Committee. The Selection Committee consists of the Head of the Management or a member of the Management nominated by him who shall be Chairman, the Principal of the College and another member of the College nominated by the Principal unless Experts is recommended by the Vice-Chancellor under S. 20 (4) (a). No member recommended by the Selection Committee shall be appointed by the Management of an affiliated College unless prior approval of the Vice-Chancellor has been obtained under S. 20 (10) or (11) (a) has been done. -

The Vice-Chancellor, if then satisfied that the candidate recommended by the Selection

Committee does not possess the minimum qualifications or important qualifications, or that the procedure laid down in the Act for the selection of the teacher has not been followed, shall refer to the Management for disapproval.

4. According to Section 10 the student may provide for one teacher relating to the University and shall superintend, conduct for or, examine or, interrogate or, qualify or, and experienced) as teachers of affiliated colleges. The First Statutes framed by the State Government under S. 10 (3) relating to the selection Committee of the Statute was passed on Aug. 1, 1975. These were replaced by the First Statute of the University of Meerut framed by the State Government with effect from May 1, 1975. These were amended later by the Meerut University (First Amendment) Statute, 1980. Published in the Gazette, Extraordinary, dated September 9, 1980.

5. The Section 11 (1) of the First Statute of the University of Meerut, 1975 prescribes the minimum qualifications for the appointment of teachers in the Faculty of Arts with the subject of Military Science persons as under :-

(1) It is to the case of any college affiliated to the University the following shall be the minimum qualifications for the post of a lecturer in the Faculty of Arts (except the Department of Music, the Faculty of Commerce and the Faculty of Science) namely, (a) a M.A. First degree or an equivalent degree beyond the Master level or published work indicating the capacity of the candidate for independent research work, and that he consistently good academic record such as lower first or second class Honours degree or an equivalent degree of a foreign University in a relevant subject.

Clause 6 provides :-

(a) Where no candidate possessing the qualifications prescribed in clause 6 (1) or (2) or (3) or (4) or (5) is available or considered suitable the college or the recommendation of the Selection Committee may, appoint a person possessing a minimum, good academic record on the condition that he obtains such qualifications within two years of his appointment, failing which he shall not be eligible to claim tenure permanently until he fulfils the requirements.



(c) in which a married widow provision for a complaint in certain instances described in sub-ii -

(d) Where a qualified teacher or an affiliated college bringing at least five years teaching experience who fulfilled the qualifications prescribed in the Statutes or Ordinances of the University at the time of his appointment to be post of a Lecturer in that college, it is discharge for the post of a lecturer in any other affiliated college or in other institutions from that college where he served, as evidence for the post of lecturer in the same or any other affiliated college, the qualifications laid down in the Statute shall not be insisted upon in the future.

6. The academic qualifications of the petitioner and the respondent respectively, are -

Petitioner -

M.A. Ordinary Student	III Degree
B.A.	III Degree (1947)
Intermediate	III Degree (1948)
High School	III Degree
Respondent No. 1 -	
M.A. (Ordinary Student)	III De (1944)
B.A.	III De (1929)
Intermediate	III De
High School	III De

7. The respondent 2 was appointed Lecturer of Military Studies with effect from Sept. 1 1971 (1971) to the D. A. V. College, Amritsar affiliated to the Gurukul University and he has no experience of teaching this subject in the College for over five years. The issue of comparison between the petitioner's relevant teaching experience and the respondent 2 for comparison under Section 11.13(4) of the Mysore University (1971) shall arise. Obviously, the respondent 2 cannot claim to have demonstrable good academic record since he secured neither first class, nor second class Masters Degree in the concerned subject. In the case of Dr. F. F. Kalyanram, a Chancellor, Allahabad University (1952 AD 13

171) (AIR 1954 SC 1118), the quantum was referred to the comparison of experience. First or High Second Class Masters Degree then appearing in the relevant Statute. The Statute Clause observed that the mode of determination the meaning of High Second Class work, could be to draw a line or mid point and for study above and below that line would be, high and low second class respectively. The five year teaching experience, 75 per cent of the attendance in the Statute was not concerned with Sec. 11.13(4) and since, the Statute in the present took place after the respondent had spent two years.

8. On behalf of the petitioner, Sri V. C. Kandasami counselled by Sri M. D. Singh the learned counsel submitted that the respondent 2 is not eligible to be the holder of temporary under cl. 10 of the Statute 11.13. Their argument that experience gained of teaching in a college affiliated to another University cannot claim benefit of the teaching experience in a college affiliated to the University of Mysore itself. Sri S. S. Varma learned counsel for the respondent 2 submit on the contrary that, the respondent, affiliated College, he possess a broad experience in a not to exclude the teaching experience in any college irrespective of consideration as to which University it is affiliated.

9. The respondent 2, namely, according to S. 13(4) of the Act means an existing University or a new University established after the commencement of the Act under S. 8. Whereas as conceived here with a new University, because the Gurukul University was established in 1956 and the Mysore University, in 1911 - both prior to the commencement of the Act. Gurukul University, as defined in S. 3(6) is meaning the University of Lucknow, Allahabad, Agra, Gorakhpur, Banpur or Mirzapur or the Sampurnanand Sanskrit Vishwavidyalaya or its constituent the Section 3(3) mentioned specifies that affiliated college means an institution affiliated to the University as according with the provisions of the Act and Statutes of the University. The First Statute of the University of Mysore, 1911 referred above also contains definition of the Clause 13(4) defines University as meaning the University of Mysore, and also there is

the usual routine, persons in such a position must be that the words and expressions used had not defined in their law, nor shall the act, unless the context otherwise requires, the meaning ascribed therein to the Act.

16. Upon establishing these domains claims contained in the Academic Statutes, Cl. 10 will go far as relevant made as follows :-

Where a confirmed member of a college affiliated to the University of Mysore having at least five years teaching experience who filled the questionnaire provided in the Statutes or Ordinances of the University of Mysore or for one of the main appointments to the position of Lecturer in that College is a candidate for the post of a lecturer in any other college affiliated to the University of Mysore, his qualifications shall not be treated upon as the subject.

11. This is an option to the given meaning of cl. 10. The well recognized rule of construction is to construe the Legislature to have meant what they have actually expressed. The object is to discover the true meaning, but the intention of Parliament must be deduced from its language used. I take all these provisions of Statutes, (1967) Statute 17 10. The construction of a statute must not so strain the words as to attribute some plainly unintended from the dictionary meaning of the language. P 12 10. The cardinal rule for the construction of Act of Parliament, say P 12 10. Statute Law 1971 Pp. 44-45 is that they should be construed according to the natural and plain meaning of the words themselves. If the words of the Statute are themselves precise and unambiguous, then no more can be necessary than to express their words in their ordinary and natural sense. The words themselves are to be construed according to the ordinary meaning of the two given. The learned Author observes further "natural language of an Act is clear and explicit, so that good effect will whatever may be the consequences, for it is clear that the words of the statute speak the intention of the legislature.

12. In this interpretation of cl. 10) talked into correspondence the dictionary meaning assigned in the Academic Statutes, we are fortified by the text of language used by the same statute, leaving nothing in the Statute

Government in other places in these same Statutes. It is not without significance that whereas the basic Government intended that affiliation of a college to a particular University for use the relevant factor of the employed specific language to express the intention. Cl. 10) for instance in providing the rules for determining the status of Principals and other teachers, affiliated colleges says :-

1) of Service as a substantive professor in another University or another degree or post graduate college whether affiliated to or associated with the University or another University established by law shall be added to the length of service.

13. In Mysore is good that to carry out the intention behind merely for avoiding the option to have the benefit of merely the language could not be otherwise. How may the new where would the provision contain past experience of teaching as an instance? There will obviously have been in that area some such experience in another University or another college and whether affiliated to the University or another University, under cl. 10) of Statute 17, 12 placed a qualification in cl. 10) that is because absolutely clear that consideration of any other University or College is excluded from the purview of cl. 10) 10.

14. In regard to comparison of merely for teachers appointed to the University Statute here has been taken to provide in statute 17 that that Service against an administrative appointment in any University or institution shall not count for the purpose of service. Cl. 10) of Statute 17 12 is more more explicit in this behalf :-

When any teacher holding a substantive post in any University other than the University of Mysore or in any constituent college or any institution appointed as post of corresponding rank or grade in the University, the period of service rendered by such teacher in his grade or rank in such University shall be added to the length of service.

15. Statute 17 10 which provides that a teacher of an affiliated college designated as any of the provisions read in cl. 10) Cl. 10) cl. 10) of Statute 17 10) shall not be re-employed in any University or any college affiliated to or associated with any University

in any respect is in the subject, formal correspondence with Senate. It is recognized, however, that the University is distinct from affiliated colleges. The expression in the University Act to "place" a Statute in force which provides that the Academic Council shall have the power, after due notice, to award the Executive Council an opinion in the qualifications to be possessed by persons occupying positions as specified subjects for the various degrees and diplomas of the University, notwithstanding, however, the University of Munro. The expression, the University as if it bore a definite diplomatic meaning as per definition given in C. 131 (b) - a document therefore and to read in place thereof, any University statement it would be recognized as correct to interpret the words, the Council or the Council of the University, as meaning the Statute in Constitution of any other University. The expression, however, being used refers persons to the particular University of whose name the name, namely the Memorial University.

16. Limited Council power in the absence of a Council committee committee when the statute otherwise requires. We are conscious of the importance which the statute has in matters of this kind. In the words of Lord Denning, "It is not possible and Application of Statute (1971) P. 11.

Although subordinate, the role of statute is highly significant. An statute takes on off to provide evidence that a principle is at best inadequately defined and over-general. But only does the statute limit the normal scope of primary institutional meaning, but it also refers among the alternative possibilities of primary meaning. The elements of statute that prevent the law from being an actual fact, however, or effect a statute, even after it is duly read in the document or more usually publicly noted. They effect meaning by turning the possibilities of multiple or alternative primary meaning into the existence of a single direct primary meaning.

17. But what does the context which itself is placed directly? Section 11 (1) provides the maximum qualifications for the appointment of a statute in an affiliated college. Section 100 of the Act states upon those qualifications being duly observed, the

Vice-Chancellor shall not record approval or any approbation of the fact that the maximum qualifications for the appointment prescribed are being duly observed. The candidate has to be personally and academically sound with at least five or seven other Members degree in the subject. This is the context in which the statute provides an exception. The nature of the internal requirements for the work required to reach a higher degree is related to some extent to the fact that the candidate only in the given instance, is hardly subject to the same standards in respect of work which the University is required to do, but is not to be considered as such.

18. In the ordinary course of business it is assumed to be part of its own decision, if not that in a given instance two different words have been differently used to express two distinct things, but they assume that at subsequent matters the legislature has not lost sight of the distinction, especially observed in the preceding statute of Council on Senate Law (1971) p. 114. Whereas, in the present, we are concerned with distinct words used in the same context, there is a presumption that the same words or phrases have the same meaning throughout the same statute. The evidence, we maintain as regard to the existence of such a presumption. See *Maxwell's Interpretation of Statutes* (1961) p. 124. *Green's Dictionary Interpretation* (1974) p. 100. *Green's Law Dictionary* (1974) pp. 100-01. Though this points out the role of context, namely the fact that the words are not of much weight and as the statute analysis the is a matter dependent on the statute as a whole in the context of the statute. We have under light of these principles and keeping also in view that the statute is given by the Executive Council through the Council, we assume that it is not to be assumed to refer to the University other than the University-affiliated, or to the affiliated college other than college affiliated to the University. The consequence, even so, statute words are to include some, though limited, from the natural meaning of the language employed.

19. In *Formal* when clause 5 (4) of the Act had provided that the governing the State Government to exercise its authority the

of Lucknow. The attitude of entire college has changed with the conversion of the state of women's university. It is urged that if it were appointed as a college affiliated under us in 1954, Lucknow and then that college got included in Bihar University. It was not according to the agreement and the benefit of preparation according to that other college. Similarly, if say the appointment was made at that college in 1952 when the Mother University was not established, then in that case he would not be eligible unless he has put in requisite number of years in a college affiliated to that University. These considerations do not obligate us to stretch the language of cl. 13 otherwise plain and are obnoxious as to consider that in order the purposes of teaching in any college of which is standard that might be. The business have taken adequate care to ensure by way of express language that reference to a college affiliated to that University will cover cover provided further it is established that the candidate fulfilled the qualifications prescribed in the Statute in Ordinances at the time of the appointment. In order that this clause may be interpreted in the way the learned counsel suggests we have to add words to it. This exercise of interpretation does not permit us to do unless the clause is in such a category of *obscure or ambiguous meaning*, neither of which we find in a *British India General Insurance Co Ltd v. General Mutual Singh AIR 1959 SC 538* at p. 604. We turn to the circumstances which on a voyage of discovery to start on our own when this is minutely examined to be brought within the clause. *Major and Lt. Mathur v. Board District Council v. Newpan Corporation NO 113 A4 335 339*. International performance for standards is not an unknown phenomenon. University was established for post graduate student education subject to certain provisions kept open for international performance regardless of university laws and the law has been upheld (see *Id v. Chaudhali* (1972) 2 SCC 383 (AIR 1971) SC 376). In *Appala Ram (1981) 2 SCC 388 (AIR 1981) 2 SCR 388*. In *Pratap Kumar, Union of India, AIR 1994 SC 1032*).

This is the command of the three reasons for interpretation in the general clause stated by Lord Dufferin in the Interpretation and Appointment of Statute.

The important interpretation problem is to determine in the light of the law and its proper domain, whether the later suggestion that a normal reading of the language would produce no ambiguity, an ambiguity or consequences create problems on a reading enough that the most plausible alternative is to conclude that the legislature did not mean what it apparently said. This is a matter of judgment under the circumstances and specific words are harder to read. Although the presumption against ambiguity is strong, the presumption against ambiguity and consequences, depending on degree, are usually weak. Nevertheless, especially long and complicated cases, facts that it has been suggested to the point where there is possibly only one natural conclusion that the legislature intended something other than what it said.

On the face, a plain meaning rule may be valid, even apart from excluding materials due to beyond proper context. If it tends to emphasize that the presumption that the legislature meant what it explicitly said is not overcome merely because the clause has a date for words produced in that already some confusion, or less beneficial results than the broader purpose of the statute wouldness call for.

10. We, therefore, find that respondent 1 does not fulfil the prescribed minimum qualification for appointment in Lucknow in Bihar University. The Vice-Chancellor did not act in conformity with § 3(1)(a) of 1952 with Section 13 of Ordinance in appointing respondent the appointment. The engaged order made by the chairman is partly erroneous having been passed without consideration of their mandatory provision.

11. This may appear back to the respondent No. 5 but the court, we are afraid not, not help this. Given that in January Commission (1948) P. 244 observed —

in a general rule, the courts have no power to add to or to change, alter or abrogate the words which the legislature has incorporated in a statute, nor may it apply to provide the express interpretation which the legislature failed to give. It is not binding flowing from the language used.

or to regulate the custody of the minor.

(Employee supplied)

22. It is well settled that it is not the duty of the Court to regulate custody of both living boys (minors) distributed to or amongst, in order to fill up a gap in supply, because by so doing the standing, the feelings of the judge concerned, the words and the language used may be taken their natural meaning and are put at their inflexible and popular meaning given at *Shah Ali, J* in *S. P. Gupta, Union of India 1981 Supd SCC 57 at p 77* (AIR 1982 SC 101), *J* 72 in *Minor Queens Insurance Co Ltd v. Indian Overseas Bank 1980 1 SCC 666 at p 107* (AIR 1981 SC 208 at p 210-11) (the Supreme Court speaking through Chandrasekhar C.J. dissented).

Each by common process and the application of recognized rules of statutory construction (such) constructions followed upon its interpretation, it is considered as the language used in the construction of a clause which in language is required and not given. This language is plain and capable of one or question only, we will not be justified in reading into the words of the Act a meaning which does not follow naturally, from the language used by the legislature.

(Citation made)

23. For the reasons the very passage is cited, the order of the 27 1982 (Annexure II) to the writ petition passed by the respondent 1 is as far as it relates to the petitioner a question and a direction issued to the effect that the said respondent 1 the Chamberlain University of Madras shall enforce the implementation made by the petitioner in the light of the circumstances made by us.

24. The parties shall bear their own costs.

25. The stay order dated May 20 1982 stands vacated.

Perpetual order.

1984 ALL L. J 701

V. P. MATHE, J.

Chandrasekhar Nuth Mallikarjuna, Petitioner  
Anwar Nuth Mallikarjuna, Respondent.

Civil Revision No. 96 of 1983, Dr. 26-2-1983.

Civil P.C. 15 of 1981, O. 4, R. 17 — Amendment allowed — Amendment by way of addition to have already no record to elucidate the matter and not in such relation with them and not changing the case to or to make new claim on them of new facts — Can be allowed.

In the present case, the plaintiff sought for his share in the sale consideration with the allegation that he was entitled to 1/4th share in the property, having been owned by his father. Subsequently, he thought that even his mother and other sisters were also due a share when the father died, they would also be entitled equal share in the property. He had sought amendments of pleadings and sought to bring in record the further fact that all the co-owners had transferred their rights and interest in the mother and the mother plaintiffs asserted the will in favour of all the four sons including daughters and in this manner the plaintiff's suit contained related to 1/4th share.

Held that the amendments which were sought, raised the subject matter of the suit as it was and the nature of controversy between the parties. It is not necessary that out of the bundle of facts it should present itself. The amendments become allowable permissible, if a variety of allegations there is to elucidate the matter. The present amendments was not in contradiction with the facts already on record. Therefore, it cannot be said to completely change the case against facts now, then was made this case was constituted by the facts. 1984 ALL LJ 702 (SC Fol.). (Para 10)

Cases Related: Chandrasekhar Perum  
1984 ALL LJ 702 (1984 3 SCC 552 AIR 1985 SC 637)  
9  
AIR 1982 Pw 280 7

\*Agreed order of Madras District, AIR, Civil Judge, Additional, Dr. 7-11-1987.

SC/1807-04/0000 MPE



to enter into the exchange in accordance with the terms of the act. The First Circuit was of the opinion that the plaintiffs' performance of a small amount of work made in 1932. The act was filed in 1935. The court found the earlier agreement was proved. The plaintiff then applied for amendment of the pleadings, claiming damages for breach of an earlier contract already agreed at the time 1935. It was held that mere participation by the court to permit a new claim to be made over the amendment was refused.

6. We will have, therefore, to find out whether by the amendment which has been allowed by the court before the subject matter of the suit and cause of action has changed or whether they remain the same. My opinion is drawn to the fact of *Ram Aggarwal v. Bhatia*, Probate 1978 All LJ 432 where it has been held that one of the issues was to find out whether the evidence required to prove the case that the amendment would be in any way different from the one that was required to prove the case as it originally stood before the amendment. It was a case in which the plaintiff had been alleging that the marriage had taken place before an elopement and by amendment the case brought into question by saying that the marriage had taken place according to Hindu rites. The Court said in this case that the facts as which was required to be given at the place originally used would be entirely different from the evidence which will now be required to be given if the amendment is allowed and taking it to be the evidence, it required to be applied for amendment.

7. In the case of *Edo Perpet v. Sen. Shams Devi* AIR 1982 All 590 a Full Bench of this Court has held that a cause of action consists of its facts which is a statement for the plaintiff to state and establish of record in accordance with the facts of the case which arise with the law applicable to them give to the plaintiff right to some relief against the defendant. It must include some act done by the defendant. In the case of *Ram Singh v. Chaudhary v. Bhatia* Probate 1978 All 432 Prob. 1982 it was held that there is a distinction between the amendment which involves setting a cause of action which was incomplete absent and one which though present in the plaintiff's favour is defective. To rectify the

defective cause of action amendment can be allowed. The case before the Full Bench was a case in which the plaintiff had been claiming damages for breach of an earlier contract already agreed at the time 1935. The court found the earlier agreement was proved. The plaintiff then applied for amendment of the pleadings, claiming damages for breach of an earlier contract already agreed at the time 1935. It was held that mere participation by the court to permit a new claim to be made over the amendment was refused.

8. In the case of *A. K. Gupta and Sons v. Durga Prasad, Corporation* (1981) 1 SCR 761 All 197 SC 198 the Supreme Court made the following observations with regard to the cause of action. —

The expression 'cause of action' in the present context does not mean, every fact which is a material to be given to the plaintiff to prove, as was said in *Carter v. Q. J. (1974) 1 CP 107* as a different context. For a cause of action to be a material fact could not be amended or added to, of course, no one would want to change or add an immaterial allegation by amendment. That expression in the present purpose only means, a new cause of action which is not contained by the facts. Such a case was said in *Sharma v. Union Property Corporation Ltd.* (1982) 1 All 121 SC 198 and it seems to us to be the only possible way to take. Any other view would make the rule fatal.

9. The latest Supreme Court decision in this respect is contained in the case of *Vijay Kumar v. Manoj Kumar* (1984) 2 SCR 102 (1984 All LJ 100) where it has been held that normally amendment is not allowed to change the cause of action. But it is a well-recognized fact that where the amendment does not introduce additional claims, relief, defence, or cause of action, the amendment is allowed. In the case of the facts stated, on the facts, the amendment would be allowed even after the expiry, period of limitation. The earlier Supreme Court cases of *A. K. Gupta & Sons* (1981) 1 SCR 761 (1981) 1 All 197 and *Sharma* (1982) 1 All 121 (1982) 1 All 121 were followed.

10. In the light of the legal position which

not present the facts of the present case, it becomes abundantly clear that the plaintiff simply copied the last clause of the will consolidated with the allegations that he was entitled to a 1/4th share in the property having been owned by his father and that the defendant had usurped the entire said consideration and refused to pay the plaintiff share in it. The cause of action therefore arose by the defendant's receiving the entire said consideration for and on behalf of all the co-heirs and by refusing to put back the plaintiff's share even after repeated demands. The subject matter of the suit was the portion which the plaintiff claims as due to him on account of his share here and rightfully amount to Rs. 25,000. The amendment which is sought repeats the subject-matter of the suit as it is and the cause of action also remains the same. It is not necessary that out of the bundle of facts all should remain unvaried. The amendment is correct, there is no possibility of it being a way of addition of facts to change the nature. In the present case the plaintiff simply copied with the allegations that the property belongs to his father and hence to his 1/4th share. Subsequently, a copy to was shown that when his mother sold some square may also after when the father died, they will also be entering equal share in the property. He had sought amendment of his law and wanted to bring to record the further fact that all the co-heirs had transferred their rights and interest upon a 100th share mother and the mother ultimately received the full in favour of all the heirs and including daughters and in the manner the plaintiff was concerned entitled to 1/4th share. This amendment, obviously, adds nothing there already stated and hence, the amendment is correct with the facts. Therefore, it cannot be said to completely change the true nature of the case which a single case has been continued by new facts. The being so, the amendment was rightly allowed.

11. The provision of § 102 of the CPC gives to the High Court a discretionary power to interfere with the lower courts' orders. In this context the Supreme Court in the case of *Maharaj S. S. Khanna v. Nageswar P. J. Dhillon*, 1956 A 1628 489 AIR 1954 SC 607 has laid down that exercise of the jurisdiction under § 102 C.P.C. by the High Court is discretionary and that Court is not bound to

interfere merely because the conclusion is one or the subject of the section is involved.

12. In the case of *King Gopal Mahto v. Kamesh Gopal Mahto* AIR 1973 SC 1046, the case of *Maharaj S. S. Khanna v. Nageswar P. J. Dhillon* was considered and followed and the following observations were made, in that earlier case was reproduced:—

The unnecessary character of the order the existence of another remedy to an aggrieved party by way of an appeal from the judgment under its decree in the proceedings is by itself, and the general signature of the case being correctly the order made in it of course, to be taken into account in considering whether the High Court, when it comes to exercise its jurisdiction with reference to the jurisdiction over itself, exercise its jurisdiction. It follows that while exercising its discretionary High Court can take into consideration such circumstances and facts as may detract the presence in a revision proceedings being granted any relief. One of such relevant considerations would be whether the order sought to be revised has contained substantial inherent error. The facts set out in the order of the High Court under appeal were sufficient for coming to the conclusion that it was not a fit case for interference in revision. We are, therefore, unable to interfere to the restoration of the learned counsel for the appellants that the High Court did not maintain the decision in accordance with the well settled principles or that the exercise of discretion was such as would justify any interference.

13. In the present case there can be no doubt that substantial justice has been done. The defendant, vide his written statement, which he has filed in the revised, admits most of the facts stated in the plaint including the amended portions of the plaint. He therefore, does not suffer at all by the amendments. It is well open to him to take the plaintiff the case and counterclaim, as alleged by him himself before me, because the defendant is the executor of the will of the mother and it is alleged that he has not been filed by a legatee against an executor. The court below would obviously take it as since on the facts, if taken, and record on finding if ultimately, it comes to the conclusion that the plaintiff's suit was not maintainable, for





The court also has directed appropriate directions regarding operators already having permits over common routes from the scheme and its incorporating appropriate conditional clauses in the scheme, in enable them to ply their vehicles over common routes without picking up or setting down passengers on the common routes. If such a course is not feasible for State Legislature may, however, and provide some other alternative methods, but that is entirely a matter for the State Legislature, the State Govt. and the State Transport Undertaking. (Para 13)

In such a case the question really turns on the terms of the scheme rather than on the provisions of the Statute. In the Scheme in question there is a clause to the following effect: "No person other than the State Government Undertaking will be permitted to provide motor transport services on highways specified in paragraph 2 of this part thereof. In the face of a provision of the nature in the scheme totally prohibiting private operators from plying stage-carriages on a whole or part of the notified routes, it is hard to contend that private operators can claim to ply their vehicles on the notified routes or part of the notified routes. (Para 16)

(B) Motor Vehicle Act of 1930, Sec. 2(25A) (as amended in 1939) - "Expression route" - National arterial route A-B - C, D following continuous between pts. A-B - From A-B route and includes every part of particular highway from A to B - Therein only cannot be limited gate - Notwithstanding clause C-D does allow plying between A-B - Parties plying on the common route may be allowed ply stage carriage parties on the two points even if he does not pick up or set down passengers between those two points.

(Para 7)

Case referred Chandrajeet Prasad (1971) 1 SCR 493 - (1971) 4 SCC 103 - 11

AIR 1974 SC 1940 - (1974) 1 SCR 113

17-18  
AIR 1971 SC 194 - (1971) 1 SCC 107

12-13

(1971) 1 SCC 797 - (1971) 1 SCR 493 - 8-10

AIR 1994 SC 144 - 1994 Supp (1) SCR 717

8-10-12

AIR 1982 SC 1105 - 1982 Supp (1) SCR 78  
4-8-10-12-13  
AIR 1984 SC 82  
AIR 1984 SC 78 - 1984 1 SCR 78  
AIR 1984 PC 130 - 1984 AC 136  
4-7

**CHIVNAPPA REDDY, J. -** These appeals have been placed before us primarily to resolve a conflict between State Bahadur Singh v. Bihar State Road Transport Corporation (1973) 2 SCC 707 where State Road Transport Corp. v. Mysore Savings Appliances Tribunal (1971) 1 SCR 493 and Visonu State Road Transport Corporation v. Mysore Savings Appliances Tribunal (1971) 1 SCR 113 - AIR 1974 SC 194. The question for our consideration is, where a stage is authorised under Chapter IV-A of the Motor Vehicle Act, whether a private operator with a permit to ply a stage carriage over another route, but which has a common overlapping section with the authorised route can ply his vehicle over that part of the overlapping common route if he does not pick up or drop passengers on the overlapping part of the route? The answer to the question really turns on the terms of the scheme rather than on the provisions of the statute, as we shall presently show.

2. We will mention here the facts of a few cases which are illustrative of the question raised. In Civil Appeal No. 684 of 1961, the appellants held a stage carriage permit over the route Meerut to Amroha via Bareilly, Dehra Dun, Gajpur and Sahaspur. One part of the route, namely Meerut to Bareilly is also part of a nationalised route Meerut to Bareilly via Haridwar while the another part of the route, namely Gajpur to Sahaspur is part of another nationalised route Haridwar to Gajpur via Sahaspur. The question before us was whether the permittees may be allowed to ply their stage carriage over the whole of the route Meerut to Bareilly (Dehra Dun, Gajpur, Sahaspur) although permitted over their charter, to ply the nationalised route as provided they do not pick up or set down the passengers between Meerut and Bareilly and between Gajpur and Sahaspur. In Civil Appeals Nos. 499 and 490 of 1961 the appellants were appellants for the grant of stage carriage permits over



expressions more aptly to have been included, along with the confusion suggested upon the proper interpretation, in the Court in *N. Bhandari Prasad v. State Engineer, HSD, State of M.P.* 1985 1 SCR 126, 148B 1982 SC 1174 of the suggested difference between route and highway. By the *Pravara Road v. N. Bhandari Prasad Transport Co. Ltd. v. Calcutta-Rampur Cement Co. Ltd.* 1986 AC 29, 148B 1986 PC 177 about a national highway is the physical track along which an omnibus runs, while a route appears to be a linkage or to be an abstract envisagement of best of road between one terminal and another and a something distinct from the highway network. There may be alternative route leading to one or more terminals as well as the does not enter the route and highway, the same. The present definition of route makes it a physical reality, instead of an abstract conceptualisation, no longer makes a something distinct from the highway network.

44. Coming back to the highway and Chapter IV, as mentioned, M.A. which defines road transport services to mean a service of motor vehicles carrying passengers or goods or both by road for hire or reward. Next, and this is important, S. 14B gives overriding effect to the provisions of Chapter IV. A similar rule and order made standards over the provisions of Chapter IV and any other law for the time being in force. Section 19C provides for the preparation and publication of schemes of road transport services of a State Transport Undertaking. Since the answer to the question raised turns primarily on the interpretation of S. 14C, it is desirable to extract the same. It is as follows:

14C. Where any State Transport Undertaking is of opinion that for the purpose of providing efficient, adequate, economical and properly co-ordinated road transport service to the public it is necessary to the public interest that road transport services in general or any particular class of such service or service in any branch route or particular thereof should be run and operated by the State Transport Undertaking, whether in the exclusive complete or partial or other persons or otherwise, the State Transport Undertaking may propose a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be

co-ordinated particularly particulars respecting therein as may be permitted, and that scheme may be published in the Official Gazette and shown such in the manner under State Government may direct.

The object of the provision is clear from S. 14C that for State Transport Undertaking may propose a scheme for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service to be run and operated by the State Transport Undertaking exclusively in any area, complete or partial thereof. It may do so in a particular or the public interest. The scheme may be in the exclusive complete or partial or other persons or otherwise. The scheme should give particulars of the nature of the service proposed to be rendered, the area or route proposed to be covered and such other particulars as may be prescribed. The scheme has to be published in the Official Gazette as well as in any other manner that the State Government may direct. The object of publishing the scheme is to invite objections to the scheme. Section 19D enables (a) any person already providing transport facilities by any motor, road or boat the area or route proposed to be covered by the scheme, (b) any association representing persons who tend to the provision of road transport facilities, (c) any person in the public interest, by the State Government, and (d) any local authority or public authority within whose jurisdiction any part of the area or route proposed to be covered by the scheme lies to file objections to the scheme before the State Government within 30 days from the date of its publication in the Official Gazette. Clause (2) of S. 19D empowers the State Government to consider the objections and give an opportunity to the objector or his representative and the representative of the State Transport Undertaking to be heard in the manner if they so desire and approve or modify the scheme. Clause (3) of S. 19D requires the scheme to be approved or modified as to be published in the Official Gazette's whereas, the scheme becomes final and shall thereafter be called an approved scheme. There is a proviso to clause 3 which provides that no scheme which contains any entry hereunder shall be deemed to be an approved scheme unless it has been published with the previous approval of the Government. Section 19E enables the

State Transport Undertaking no casual or mobile use scheme published under S. 44(2) after following the procedure laid down in S. 46C and S. 46D in respect of circumstances such as the increase in the number of vehicles or the number of trips, change in the type of a vehicle without reducing the seating capacity, extension of the route or time without reducing the frequency of the service, alteration of the general route without reducing the frequency of the service. The State Transport Undertaking need not follow the procedure laid down in S. 46C and S. 46D if the previous approval of the State Government is obtained and if the scheme is not relating to any route or area in respect of which the said transport service has not to be run and operated by the State Transport Undertaking or the transport undertakings of other persons. Section 46B sub-section (2) enables the State Government, at any time if it is deemed necessary, in the public interest to modify a scheme published under S. 44(2) after giving an opportunity of being heard to the State Transport Undertaking and any other person who is the operator of the State Government at likely to be affected by the proposed modification. Section 46B enables the Regional Transport Authority or the State Transport Authority, as the case may be, to grant to the State Transport Undertaking the necessary permits in its applying for the same in pursuance of its approved scheme. The permit has to be issued notwithstanding anything to the contrary in Chapter IV. Section 46B(4A) enables the State Transport Authority or the Regional Transport Authority as the case may be, to issue temporary permits to the State Transport Undertaking for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified scheme. The State Transport Authority or the Regional Transport Authority must, however, be satisfied that it is necessary, in the public interest, to approve the number of vehicles operating on such route or route or service thereof previously. Section 46B(5) enables the State Transport Authority or the Regional Transport Authority, as the case may be, to grant to private operators temporary permits for application for a temporary permit is made under sub-section (1A) in respect of the

date or route or portion thereof specified in the scheme. Section 46B(1D) provides the grant or refusal of a permit, upon submission presented in sub-section (1A) and sub-section (1C) during the period intervening between the date of publication of any scheme and the date of publication of the approved or modified scheme. Sub-section (2) of Sec. 46B enables the State Transport Authority or the Regional Transport Authority, as the case may be, for the purpose of giving effect to the approved scheme in respect of a modified route or modified route, to refuse or withdraw any application for the grant or refusal of any permit or route any such application so far, by providing to cancel any existing permit, and to modify the route of any existing permit or area under the permit conditions for and a specified date to reduce the number of vehicles authorized to be used under the permit and to cancel the route or route covered by the permit, in so far as such permit relates to the modified route or modified route. Section 46B provides the grant of any permit except in accordance with a provision of the scheme. Also, a scheme has been published under S. 44(2) in respect of any modified route or modified route. This is an important provision and we may extend it later if it is suitable.

46B(1F) When a scheme has been published under sub-section (1) of S. 44(2) in respect of any modified route or modified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme.

There is, however, a provision which enables the grant of a transporter permit to any person in respect of such modified route or modified route if no application for a permit has been made by the State Transport Undertaking. Section 46B and S. 46B prescribe the principles and method of determining compensation and its payment to the holders of existing permits which are cancelled or modified. Section 46A empowers the State Government to make rules for the purpose of carrying into effect the provisions of the Chapter and especially in accordance with the various matters specified in sub-section (2).

5. It is thus seen that while the provisions



conducted in the public for the transportation of the state. C D against the transportation suffered by the public owing to travel through point A to B. On the other hand it is quite not true that under the plan, at the so-called random restrooms, there are longer routes which cause shorter standard routes, or overpassing, getting in standard routes are more when than the standard route. It is more high impossible to keep a proper check in overpass or on route. It is also not known that other routes permit for playing stage carriage from A point A short distance toward the terminal to a point A short distance beyond such the distance of standard route have been applied for and passed without the so-called random restrooms, which are but more than a few persons obtain permission to pass on the scheme. It is said that it only need for preventing the traveling public from transportation as suggested by the learned counsel; we have no doubt that the State Transport Undertaking and the Government will make a rational decision on the scheme and to avoid its convenience being taken as the traveling public.

7 One of the submissions urged was that a route according to defendant's own line drawn between two points and therefore route A B cannot be the main route in CD even if C & B happened to be two points on the highway from A to B. It was argued that if route A B was different from route C D, the transportation of route C D had no effect whatever on the persons to play stage carriage on the route A B. This argument is erroneous and is only to be noted with respect to the random restrooms; was open in the learned counsel on the basis of the decision of the Privy Council in *Barlow Valley Motor Transit Co. Ltd. v. Colombo Transport Commission Ltd.* (AIR 1946 PC 137) (agreed to as freight open to there is no real objection of route opened as B (1944) of the Motor Vehicles Act by the Amending Act of 1939. It did not have the slightest doubt that route A B would not include every part of the particular highway from A to B increased by the Motor Vehicle along that route. It is impossible to accept the argument that only the distance from A to B would be the basis of the highway agreed in order to discover a route for the purposes of the Motor Vehicles Act. Signifi-

cantly submitted, at the place there are operating does not pick up or let down are potentially between the two points the distance would be more, but in fact it is not a stage carriage because there are two points. The argument of distance being or distance for the stage route that was suggested about the stage passenger for the distance traveled along the highway, however, about two points (A, B) another argument which was advanced and which is also lacking in substance is that a complete exclusion of private operators from the common sector would be contrary to Art. 14 and the provision about such (AIR 1946) applied to the case under Art. 14 of the Motor Vehicles Act from scheme which provides for complete exclusion of private operators from the whole or any part of the limited area. Almost all these submissions have been considered and the majority judgment in *Myson State Road Transport Corp. v. Mysore State Road Transport Corporation* (AIR 1958 SC 148, 1954 SC 144) to which we shall presently refer.

8 In C P C *Myson State Road Transport Corp. v. Mysore State Road Transport Corp.* (AIR 1958 SC 148) the SC held the proposed scheme provided for taking over certain stage carriage services for the complete exclusion of private operators is provided.

The State Transport Undertaking will operate services in the complete exclusion of other persons (i) in all the notified area where routes except in regard to the persons of such distance route (ii) and within the limits of Mysore District, and also to cover the entire length of each of the main district route lying within the limits of Mysore District.

Certain persons who possessed stage carriage permits to ply vehicles on some routes and some other routes which overlapped the Mysore District challenged the scheme and contended that their permits should not be affected merely because part of the routes were within the Mysore District. Their contention was that since the removal of the routes on which they were operating vehicles were outside Mysore District, a valid one properly be used that any part of their route had been taken over merely because it lay within the Mysore District. It was held by the Court that a route means not only the





of travel. A definition in the two sections of the 1960s would make the two routes different even if there was overlapping before the scheme clearly indicated this was not any portion of the highway route of B. The stated route was prohibited, and S-102 operation could not be deduced from any other evidence or from overlap, prior to the year September 1966 before a definite prohibition of the overlapping of the routes was. The learned judges did not mean, the prior decision of the court in *P.C. M/s. Arora vs. Mysore v. State of Mysore* 1988 AIR 10 1981 (supra) and *Atish Khosla v. Mysore Revenue Appellate Tribunal* 1988 173 SC 834 (supra). *Nalanda Prasad vs. AIR 1982 SC 1126* ruling case was not cited but the point was the observation whatever may be and about the correctness of the decision etc.

13. In *Mysore State Road Transport Corps v. Mysore State Transport Appellate Tribunal* (1971) 1 SCR 449, 14 AIR 1974 SC 1949, all the earlier cases were noticed and it was held:

It is therefore apparent that where a private transport owner had an option not to operate on a route which overlaps with a portion of the notified route (i) where the part of the highway to be used by the private transport owner traverses or is free in the same highway on the notified route, then that application has to be considered only in the light of the scheme as notified. If any conditions are placed then those conditions have to be fulfilled and if there is total prohibition then the application must be rejected.

This Court has consistently held the view that if there is prohibition to operate on a notified route or routes no business can be granted to any private operator whose route traverses or overlaps any part or whole of that notified route. The statement of the notified route may not at our time accurately represent or overlapping the route because the prohibition imposed applied to whole or part of the route on the highway on the same line of the route. An observation cannot be said to be covering the same line, as it runs across it.

The learned judges expressly dissent from the decision of *Bag and Chandrabati*. It is

*Mysore State Transport Corps v. Mysore Revenue Appellate Tribunal*, (1971) 1 SCR 449 and approved the decision of the Court in *Nalanda Prasad's* case (supra) and *Atish Khosla's* case (supra). *Wanggar water for water* case by the Court in *Mysore State Road Transport Corp. v. Mysore Revenue Appellate Tribunal*, (1971) 1 SCR 449, 14 AIR 1974 SC 1949 and dissent from the decision in *Mysore State Road Transport Corp. v. Mysore Revenue Appellate Tribunal* (1971) 1 SCR 449. The learned judge in *Atish Khosla's* case of supra. When preparing and publishing the scheme under S-102 and opening or modifying the scheme under S-102, any road traffic is prohibited as far as possible, the interest of the road traffic public who could be put in a position to go to another without having to change from one service to another to route. This can always be done by appropriate changes, existing operators already having permits over certain routes from the scheme and in incorporating appropriate provisional clauses in the scheme to enable them to ply their vehicles over certain routes without picking up or setting down passengers on the common routes. If such a device is not feasible the State Legislature may amend and provide some other alternative as may done by the Uttar Pradesh Legislature by the amendment of the Uttar Pradesh Act No. 23 of 1961 by S. 3 of which the competent authority could authorize the holder of a permit of a stage carriage to ply his stage carriage in addition to notified route subject to terms and conditions relating to passengers of buses etc. There may be other methods of not oversteering through passengers but this is merely a matter for the State Legislature, the State Government and the State Transport Undertaking. But we do wish to emphasize that good and sufficient care must be taken to see that the travelling public does not so be needlessly inconvenienced.

14. *Shri B. K. Gang* urged that the provision of Chapter IV and Chapter IV A must be introduced in such a manner as to allow private bus to ply their stage carriage notwithstanding that part of their route are the parts of notified routes. We had to understand the impugned ruling against the express legislative prohibition in S. 102 that the provision of Chapter IV A and the

rules and orders made thereunder shall have effect as if they were made by the Government. Provisions contained in Chapter IV of the Act.

15. Any person, institution or group before a Panchayat through the village council or the Union Pradesh Fisheries Underwriting Underboard may play or put any stage arrangement on the notified part of an notified water body, when the limits of Lake Pradesh is from Madhya Pradesh is various published in the Madhya Pradesh State Transport Underwriting percentage on water body operations allows the playing of stage arrangements by various operators on that part of the notified water body in Lake Pradesh also. This provision was that the Government considered the water bodies and channels, the operators would play here whereas on the Union Pradesh part of the water body. We are unable to see how the scheme framed by the Union Pradesh State Transport Underwriting can be supported by the scheme framed by the Madhya Pradesh State Transport Underwriting.

16. We say the other, unable to see any arrangement of the Civil Appellate court under the scheme played before us, cannot any stage arrangement in front of operators playing or wanting to play stage arrangements on common water. On the other hand we found that presently there is a clause in the following effect: No person other than the State Government or Underwriting will be permitted to provide roadways or other means on the water specified in paragraph 2 or any part thereof. In the last of a provision of the scheme is the scheme jointly prohibiting private operators from playing stage arrangements on a whole or part of the notified water. It is held as stated that any of the appellants can claim to play stage arrangements on the notified water or part of the notified water. All the Appellate and Special Leave Petitions are therefore dismissed, with costs which we quantify at Rs. 2,000/- in each. All the orders of the Court which enabled the appellants to oppose their vehicles on notified water or part of notified water or which enabled the appellants to apply for road claims permits to go across such or without the so-called variable restrictions are hereby vacated.

Appendix-continued

1988 ALL. L. 1 324

= AIR 1988 (Allotted) 118

K. C. AGGARWAL AND JAGDESH CHANDRAJI

—Troya-Narain, Narain and others, Petitioners v. Government, Madhya Pradesh State Transport Underwriting and another, Respondents—

Civil Appeal Nos. 1041 and 1042 of 1984 (P. 24 1988)

U. P. Agricultural Cereals Act (19 of 1971), S. 15A (as amended by U. P. Act 29 of 1974) laws advanced to appellants — Necessity by sending necessary certificate to Collector — Provision as to water body, see section of Act 14 (Government of India, Act 14)

The provisions for recovery of loss by sending necessary certificate to the Collector for recovery as to water body, see section provided by S. 15A cannot be said to be violative of Art. 14 of the Constitution on ground that it is harsh as compared to provisions for recovery in S. 11 and S. 10A, 10B. The object of the Act is to help the agriculturists by providing financial assistance. Appellate court held that where a trade by the Government not being recovered it caused a number of difficulties have been created. It was held the object of sending the certificate to the Collector, the amount that the machinery of collection of the amount due under the mortgage deed as it was an amount of land revenue was provided. In view of the object sought to be achieved the procedure provided by S. 15A cannot be said to be violative of Art. 14 of the Constitution. (Para 11)

S. 11A does not suffer from absence of guidelines for its execution. When S. 11A is provided with a view to lay down a more specific method of recovery the same could be required to end the process of providing for recovery remedy in itself a good law. (Para 12)

The absence of a provision for appeal against the process of recovery proceedings under S. 15A by the principal object of the Act does not make the power unreasonable or arbitrary which that renders the provision invalid. (Para 13)

Cases Referred Chronological Form

AIR 1985 SC 87	24
AIR 1985 SC 118	25, 26
AIR 1985 SC 443	26, 27

LC/ALL/GOODS/1988



Model Bill, The U. P. Agricultural Credit Act 1975 was passed on the said Model Bill.

The President of the Act reads:

An Act to make provision to facilitate adequate flow of credit for the agricultural production and development through banks and other institutional credit agencies and to maintain connected framework of financial services.

4. The President clearly lays down the object for enacting what the Act may pass. The aim was to help the agriculturists and to keep the money in circulation. For this purpose, the provisions relating to recovery of the loans advanced had also been laid down. The object of advancing loans was not to give to the agriculturists by way of subsidy but by way of help. The agriculturists were required to return the amount to the bank from which loans were taken so that the money did not get blocked up. The procedure of recovery had to be made as simple for distribution to agriculturists were tapped. The commercial banks were required to extend financial assistance to agriculturists to enable them to meet their requirements and therefore to ensure the same as requirement. To secure payment of loans, the legislator by the Act, intended the U. P. Zamindari Abolition and Land Reforms Act made provision for payment of charge on basis of loan of a bank, by decision.

7. In 1975 when the working of the Act was reviewed, the U. P. Agricultural Credit (Amendment) Act 1975 was passed. The Statements of Objects and Reasons appended to the said Act reads:

With a view to ensuring adequate flow of credit for agricultural production and development through commercial banks and other institutional credit agencies, the Uttar Pradesh Agricultural Credit Act was passed in the year 1975. But the working of the Act revealed certain loopholes and deficiencies. The problem of risk bearing remained as well as serious. The scheduled banks failing to agricultural credit made a number of suggestions for the improvement in the provisions of the Act. The Government of India also suggested certain amendments. The present Bill for the amendment of the U. P. Agricultural Credit Act, 1975 has accordingly been prepared after consulting the representatives of the banks and other lending other agencies involved by the State Government.

8. The amended statement gave as an

also about the purpose of the Amendment Act, 1975 by which amongst others, S. 11A was inserted.

9. By referring to Ss. 11A and 12 of the Act, the petitioners urged that there would have no opportunity to put forward their case or to support it their own's case. In the proceedings under S. 11A, they could go to the Court and get their property reclassified by a National Urban reference to determine the amount due. Section 11 requires the bank to approach to the Prescribed Authority, by recovering the amount. The Power to collect (11) of S. 11, requires the Prescribed Authority to apply all mind after giving an opportunity to the possessor. Here again, this is an independent application of mind and towards the application of mind by the bank. Under subsec. 2 of the order of such notified Authority is subject to appeal, which is provided in S. 12 of the Act. On the basis of these provisions, the petitioners claimed that they will have opportunity to put forward their own and to have the claim of the bank, but no such right has been given by S. 11A, they would be deprived of putting forward their own points and against the question that the amount stated in the recovery certificate is not due. Counsel urged that the power conferred by S. 11A is arbitrary in application as to which whenever a claim in the recovery certificate to be issued, the Collector will be bound to recover the same, and even if the recovery certificate is incorrect no one would have a chance or opportunity to state to the Collector about the inaccuracy of the bill.

10. Counsel urged that the discrimination which is prohibited by Art. 14 is treatment in a manner prejudicial compared with another person similarly situated by the adoption of a law, whereas no preferential difference from the one applicable to another person.

11. We have already analysed in 11 and 11A. Under S. 11 proceedings are initiated before the Prescribed Authority in respect of agricultural property which is the subject matter of charge and mortgage claim. An order of sale of the said property, there can be made by, the Prescribed Authority, whereas under S. 11A proceedings are discontinued before the Collector in respect of any property, whether movable or immovable. While making the recovery, the Collector can adopt one or more of the methods the recovery provided by S. 29 of U. P. Zamindari Abolition and Land Reforms Act. Two methods can be simultaneously adopted. For meeting S. 11A, certificate of



limited possibility of discrimination for the real rate of discrimination than it must take into account.

18. In *State of U.P. v. Shreeji*, AIR 1988 SC 3938, the provisions of Sec 34 (a) and 7 of U.P. Public Land (Government Recovery of Rent and Damages) Act, 1959 were challenged on the ground that the provision of the Act for recovery of possession and damages for misuse of numerous preexisting void sales under Art. 14 of the Constitution was made in the said procedure was arbitrary. Having not given sufficient guidelines as to when the same was to be adopted the petitioners sought a writ. The Supreme Court rejected the argument by referring to its earlier decision given in *Shreeji* v. *State of U.P.*, AIR 1979 SC 1383 and *Margdar Chhapardil (P) Ltd. v. Municipal Board of Greater Bombay*, AIR 1976 SC 2039. In both the first decision was that of *Margdar Chhapardil* (supra) in this case what was said by the Supreme Court in para 28 was as under:

It is not necessary to strike down the provision in Art. 14 if it can be salvaged and questioned differences between the two procedures is that one is substantially and truthfully done and practical than the other and we must therefore follow the latter which is the superior with it is to be human institutions are bound to exist where two procedures are provided. We should not adopt the mechanical approach when handling the feasible realities.

19. In *State of U.P. v. Suran Singh*, AIR 1988 SC 750, which dealt with the validity of U.P. Public Land (Recovery and Recovery of Rent and Damages) Act, 1959 (Act No. XIII of 1959), the Supreme Court reversed the judgment of the High Court, which had held that provisions of the said Act were void on the ground of Art. 14 of the Constitution.

Further, it was found that the procedure under the Act under consideration was not so harsh and arbitrary as to require a declaration under Art. 14.

20. In laying down the law in the above cases, the Supreme Court had emphasized that the provision lay down the purpose behind them, that is, the problem belonging to the Corporation and the government should be subjected to specific procedure in exercise of its duty to recover possession, occupying them. This was repeated by the Supreme Court in subsequent judgments for the restoration to state account and reduction for the officers to

a state treasury of the procedure prescribed by the Act and not apply it, despite knowledge of the violation of it. Citizens, therefore, granted the Supreme Court held that the provision providing for recovery remedy, could not be struck down on the grounds of discrimination. The Supreme Court observed:

It could not be. The Act could not be struck down on the grounds of discrimination because recovery of the Municipal Board and government properties and if it happened, the Court was not concerned.

21. We have already referred to the object and purpose of the recovery, Act by which it was enacted. Consequently, the object was early recovery of money paid to government by way of interest advance. This procedure was provided as in practice has shown that despite 5 (i), money was being held up. Consequently, 5 (1A) was inserted, which provided for various modes of recovery. In the Collection of arrears of land revenue. Recovery of dues in arrears of land revenue in a possible way or method to recover the amount payable from the persons from whom recoveries are being made. A system has a right of equal treatment, but it is in the part of equal treatment cannot be permitted not to give the government, even in public money. A taxpayer has no right in putting the proceedings of recovery, which is laid against to be for the purpose of the recovery advanced for the recovery 5 (1A) to be void on the ground of Art. 14 of the Constitution.

22. In *State of U.P. v. Suran Singh*, AIR 1988 SC 750, the recovery of state land revenue was not a matter of land revenue under the provision of U.P. Zamindari Abolition and Land Reforms Act and its Public Land (Recovery) Act. The Supreme Court, therefore, has dealt with the provision of the Act and has not the recovery of money is done only after service of a notice on the delinquent. In this case, and taking that into account as well as the fact that public money has to be recovered significantly in public interest, the Supreme Court upheld the validity of 5 (1A) and 5 (2) of U.P. Zamindari Abolition and Land Reforms Act and its 50 (1A), 50 (1B) and 50 (1C) of the Act. It found that these provisions were not violative of Art. 14 of the Constitution. The Supreme Court emphasized that the recovery of money is necessary for the recovery of land revenue is required to set the



legislation is not used in the same already (added) to be so. It is intended to increase their assets. The provisions made by the proposed amendment also state that under S. 11 the power of the treasury remains. S. 11A is the absence of provisions would be substantially removed. The basic right of the fact that the government had shown in the legislation that despite S. 11 there were a number of families, many among the business and public that it was not this purpose that the legislation provided in S. 11A that the families could be removed in terms of local revenue. If S. 11 is in good condition, as S. 11A, one has to understand the existence of certain local government provisions to protect the interest by referring to S. 11 and not to S. 11A. Section 11A provides for different modes of recovery, including an appeal to a magistrate which includes and not available under S. 11. If public monies are not paid within the agreed time, the state would get back the money in a different way, which also would be given the financial assistance for which the state with which the provisions of the U.P. Agricultural Cycles Act 1973 was made. This Act intends to benefit the maximum number and this purpose would be completely defeated if provisions are made separately for the intention of taking money to support of slavery system. It appears that indeed there is a right to pooling resources and this resource of money taken by them on loan. It is also unfortunate aspect of the matter which has prompted the previous like the provisions in almost argument that S. 11A is a violation of Art. 14 and the Government. Another right of a defendant, the Supreme Court in *Kishore Chandra v. State*, AIR 1984 SC 1610 and a similar

A person who does not pay the amount of tax liability and ultimately due to him can hardly complain of the amounts lodged by the State to compel him to pay such amount. A taxpayer is the defendant's complaint prima facie against the state of amount charged but not a right to him to demand to the State the methods which it should adopt for recovering the amount of tax due from him.

26. In *Haroon Lalji, Collector of Indore v. AIR 1961 SC 132* again the need for recovery of public dues expeditiously was emphasized. The Supreme Court held that and that the amounts could be recovered by the State at any time after the bank belonging to the private State of Indore had merged with the State. In summary and more because that of the State of Indore. To the same effect is the very latest in *Lachhman Das v. State of Punjab* [1987] 3 SCR 507. AIR 1987 SC 223.

27. Section 11A legislation is a loan up, amount of financial assistance granted by a bank to an agricultural and the bank is the pool together with interest on the due date. Then without provision to the provisions of the 1980 and 11, the bank (product) of the bank by whatever name called may be named in the Collector a defendant in the amount provided specifying a defendant, then, to the agricultural. The right to pay a defendant has been given to a principal officer who obviously, cannot repudiate his duty. He would be required to pay himself down the maintenance of the amount which is being sought to be recovered as a way of loss avoided. The defendant officer has to be satisfied firstly that the demand was reasonable and secondly, that it was not barred by law. It is, however, not required by the section that the Collector Officer must record the reasons or the basis of his satisfaction at the time.

28. It was urged by the counsel for the petitioner that the discretion conferred on the principal officer as to the time and manner of recovery, in the provisions stated, emphasized for the need of being paid as a requirement of having. The law is there in this subsection. The discretion must at last be reported somewhere. The law is in many cases the only remedy is for wisdom and integrity of public officials. The Government cannot administer without maintaining power, trust and confidence. If we consider and take into account the fact that the amount which is sought to be recovered from the bank is shown in the books of account of the bank, which offer financial statement and evidence of the state is in the shape of a pass book given to every agricultural, he certainly would agree on this account. The amounts paid from loans and interest which accrue charges are entered in the pass books. These pass books are always in possession of the agricultural. An agricultural has no doubt about the contents of the pass books and the entries made therein, he has only to consult his bank. Pass book means the entry-entries in the ledger. That being so, no bank is likely to claim the amount arbitrarily and capriciously. Sometimes a man, happens that the amount claimed is more than what it is due. In that event such a person can always contact the bank and get the correct amount shown in the ledger, and one would be left to believe that the power of not being given opportunity of having by the bank, a record of substance. We know of no authority to government a provision of the Act to be void if it is within general scope of the constitutional





which will have to be applied while testing the quantum of the provision of appeal on the said Art. 14 of the Constitution in *Babu Bhan and Co. v. State of Orissa* (supra). Applying the three intermediate cases, we find ourselves unable to refer to Art. 11A to let this case Art. 14 of the Constitution on the ground.

38. In *Jagannath Prasad v. State of U. P.* AIR 1961 SC 1375 and *State of Orissa v. Balakrishna*, AIR 1961 SC 779 the Supreme Court held that quantum of the provision of appeal, where two procedures are provided will not vitiate Article 14 of the Constitution. In *Jagannath Prasad* some (supra) two alternative procedures for conducting enquiry against a police officer were available. One under Regulation 95 of the Police Regulations and the other under B. 4 and V of the U. P. *Transitory Proceedings Administration's Tribunal Rules*, and no appeal was available under the Tribunal Rules. When no appeal was provided under the Police Regulations the Supreme Court said that there was no discrimination. In *State of Orissa v. Balakrishna* (supra) two sets of rules for conducting enquiry against a non-gazetted officer were available, and under the Tribunal Rules enquiry order under C.C.A. Rules (CCA) Rules. The Tribunal rules defined misconduct more properly while C.C.A. rules are somewhat vague. The Tribunal Rules do not set out the punishments as in the case of C.C.A. Rules. Provision for appeal was not available under the Tribunal Rules. The Supreme Court held that it was not discriminatory. In *State of Madras v. G. Janardhan*, AIR 1961 SC 1100 the Supreme Court held that where two alternative procedures against a police licensee, one under the Tribunal Rules and the other under the Madras District Police Act were available absence of a procedure for appeal was not discriminatory.

39. Counsel for the respondent emphasized following the decision in *Manohar Gadhia v. Union of India*, AIR 1974 SC 107 that the 31 includes it also referred to his fair paid and responsible and not arbitrary or whimsical. According to the learned counsel there are components of fairness, and as in the instant case property will be made of money without having the same a model. We are unable to accept this submission. Without proper reasons for upholding S. 11A. The proposition of law as advanced by the learned counsel is not disputed. To us it appears that the procedure is not unreasonable and arbitrary. It is fair, just and reasonable. Therefore S. 11A,

cannot be struck down on the ground that it does not take care of procedural fairness.

40. The last requirement of the law and constitution demands collection charges which is submitted that the State is not responsible to realize. We are unable to accept this submission. Section 32 of S. 11A provides that the amount due to the State shall be paid after deducting the expenses of recovery, and satisfying any government debts of other prior charges. Rule 24 which has been made under S. 11A, and Section 24 of the Act, lay down as to how the amount of collection charges is to be paid. The law performance is about the meeting of expenses of recovery, which would be at the rate of one per cent on the amount of the claim. Counsel is not that the fashion is not per se arbitrary. We do not find any error in the submission. The maximum limit is not precise. Because of the same was within the rule-making power of the State Government. Similar reference of one per cent on collection charges is to be found in the U. P. *Transitory Administration's Tribunal Rules*. *Manohar Gadhia* (supra) has demonstrated that the government is bound to the remedy of recovery as an aspect of fair recovery, one has to understand as to why should the collection charges be so limited than such a point.

41. In *S. V. Varma*, learned counsel appearing for the State Bank of India in one of three cases pointed out so that repeated notices are issued by the Bank before issuing recovery certificate under S. 11A. It despite continuous payments of interest not made and money is given in collection of the same no response to recovery of collection charges can be taken.

42. It is a very precise that Court cannot go into the merits of the controversy, it is whether a person taking loan should have been granted further facilities and recovery should not have been made before principal and individual delinquency of the delinquent. In our opinion the High Court cannot do so. Indeed it is not a method of enquiring into the various aspects of the delinquency of individual and so on. It is not that administrative document cannot be unreasonable or in fact it is not unreasonable that we believe the authority could have arrived at their decision. This is one facet of the remedy. But, it is unreasonable to think that because the Court disagreed with the view taken by the Administrative Officers as the matter before it, that same necessarily be thought to be unreasonable.

It has been said by the Hon'ble Justice that judicial power is never exhausted for the





that hotel, innkeeper. That is even without sub-letting premises may be deemed to have been sub-let if the tenant in order to avoid applying, slip or several foreign persons a person other than of his family to occupy it. There is, however, nothing in this explanation which is, said may indicate that it applies to such occupation, future commencement of the Act. No instance can be derived from experience deemed to have sub-let. This deemed is in relation to sub-letting, and not to joint tenancies. The number of persons as permitting a person other than a family member to occupy normally does not amount to sub-letting, but it has been created as a tenant by the explanation.

4. In *Ram, Manu Devi v. Ram Control & Equipment Company* [1978 AC 901], 1485 1076 AC 971 a Full Bench of five Judges held that in 12 and 21 of Act 2022 of 1970 were not retrospective. Learned counsel for opposite party argued that the question whether S. 22 was retrospective in prospective did not arise in *Ram Manu Devi* the stand on fact, *Kashir Bhai* District Judge, Mumbai. While All Bench Case 202 in Full Bench Division, where it was held that S. 12(1)(2) of the Act was retrospective. And so by Explanation to S. 22 that has been created of deemed agency of the building was sub-let exception to sub-letting which had taken place before the commencement of the Act. Evidence was also placed on *Shandha Nath Thackeray*, D. Addl. Dist. Judge Kamper 1977 (1977) 2002. The above were the cases in respect of S. 12(1)(2). They did not relate to S. 22. In fact *Chandha Devi v. Viti Addl. Dist. Judge Kamper* File All Bench Case 202 (1981) 1977 2002 2002 was observed.

Page 507 para 5

Counsel for respondent No. 2 has placed extensive parties stipulations made in fact *Kashir Bhai* case original and on that basis has argued that S. 22 is should be treated as retrospective. I find it difficult to accept the submission in view of the decision in relation above on the point, copy of which is a decision by a Full Bench of five Judges. That report, which of the fact that decision in *Kashir Bhai* case (supra) while holding that S. 12(2) of the Act was not retrospective is applied to Explanation (2) to S. 12(2) of the Act, there seems to be no escape from the conclusion that

the said Explanation cannot be held to be retrospective. Two main grounds have been stated in fact, *Kashir Bhai* case (supra) for holding that S. 12(2) of the Act was not retrospective: (i) the word of the word which in the present sense is S. 12(2) of the Act, and (ii) the legislative history, in the sense that under the old Act there was no part of it whereby a tenant could be treated as his sub-tenant accommodation if he occupies a person's separate. Both these grounds, upon explanation, appears, in the interpretation of Explanation (2) to S. 12(2) also. The said Explanation also uses the word tenant, in the present sense. Likewise under the old Act there was no provision whereby a tenant was to be deemed to have sub-let the accommodation if he occupies a person's separate accommodation as a part that not was permitted, the tenant to be occupied by some person who was not a member of the tenant's family. If the intention of the Legislature was to make Explanation (2) to S. 12(2) of the Act retrospective, there would be difficulty in dealing with the language of section 12(1)(2) and using the same in Explanation (2) to S. 12(2) in place of saying, where the tenant ceases, within the meaning of clause (2) of sub-section (1) or sub-section (2) of S. 12, it could have very well said, where the tenant who is deemed to have agreed to occupy within the meaning of clause (2) of sub-section (1) or sub-section (2) of S. 12, to occupy the building or any part thereof is a sub-tenant in relation that Explanation (2) to S. 12(2) provisions clause (2) of sub-section (1) or sub-section (2) of S. 12, which has been held not to be retrospective in fact, *Kashir Bhai* case (supra).

Even accepting the view of fact, *Kashir Bhai* case it does not help the opposite party as the Explanation has been appended to explain the scope of S. 22. By a mere course to occupy as defined in S. 12(2) (2) has been factually deemed to be sub-letting. The reason cannot be stretched beyond the purpose for which it was incorporated. Objected as stated earlier was in which commencement of building by a person other than family member. It does not extend beyond it, by an exception to S. 22. It does not extend to retrospective because S. 12(1)(2) has been held to be retrospective. Since it is said in explanation it shall apply only in those cases where tenant ceases to occupy, within meaning of S. 12(1)(2) after



general body of the members known. Two trial groupings registered for the preliminary and final election to the respondent No. 1 (known to be a collective group) of the management of the Institution. In the employee's statement of 21st June 1985 the Deputy, District Education Officer, Bangalore, has held that the Committee of Management of which Sri Ram Kumar Singh (the respondent No. 2) is the Manager is in actual control of the management and affairs of the institution. This order has been passed under S. 10-A of the Intermediate Education Act.

2. Briefly stated the petitioner's case is that Sri Arunachal Chandra was the President of the Society. He had not convened any meeting of the Society for the election of the new Committee of Management for a long time. Sri Krishna Lal was a casual member as the Manager of the Institution since 1984. Consequently, His Friend and was other persons alleged to be the members of the Society on 1.1.1985 to the President Sri Arunachal Chandra on 20th June 1985 for convening a meeting of the Society involving an election of Management. There has been some dispute as to who is the existing, the other person elected. It seems Chandra himself did not convene any meeting. Consequently, meeting of the general body of the Society was convened in the presence of 15 persons on 2nd July 1985 at which a new Committee of Management was elected, which in turn has not yet convened an office session with Sri Arunachal Chandra Singh presiding. He has no authority over Sri Sri Sathyanam College. The petitioner No. 2 is the Manager of the Institution. The new office session held after the registration of the Society which was initially registered in 1987 but failed and their predecessor had not acted as there the same session. Accordingly Sri Tej Bahadur Singh applied for the removal of respondent No. 2 (1985) which was rejected on some technical ground. Thereafter he applied for fresh registration which was granted on 28.11.82. On 28.11.1982 Sri Tej Bahadur Singh applied to the District Inspector of Schools for attestation of his signature when he was informed that the District Inspector of Schools had already attested the signature of Sri Ram Kumar Singh on 1.11.1981 (meaning that the validly elected Manager of the Institution. The petitioner therefore filed application

a result of which the District Inspector of Schools directed that the other members of the Institution shall be grouped in two groups and by meeting called under S. 2 (1984) be ordered the election between the two trial groups to the District Education Officer, Bangalore.

3. The Deputy District Education Officer, Bangalore, in exercise powers under S. 10-A which provides that wherever there is a dispute with respect to the management of an Institution, petition filed by the Deputy Director of Education upon such inquiry as he deems fit to be in actual control of the affairs may, for purposes of this Act be recognized to constitute the Committee of Management of such institution and in case of competent resolution directs otherwise, directed the respondent to give that person in writing. The parties were also asked to file relevant documents and records in respect of their respective claims. On a consideration of the entire material on record the Deputy Director of Education held in the impugned order that the Committee of Management which is elected on 28.11.1982 was Sri Ram Kumar Singh as the Manager and Sri Arunachal Chandra as the President was a collective body in the affairs of the Institution.

4. The case of the existing respondents is that the Committee of Management which was elected on 28.11.1982 was the only legitimate and validly elected Committee and is the Committee which has been in actual control of the Management and affairs of the Institution. Sri Arunachal Chandra never received any signature alleged to have been sent by His Friend and others. Indeed, the said other persons who are alleged to have registered the meeting of the general body on 20th June 1985 are not even members of the Society. Nor is the Society which Tej Bahadur Singh got registered on 28.11.1982 the real Society, which has been running the Institution. At any rate the registration which was obtained by Tej Bahadur Singh on 28.11.1982 was cancelled by the Registrar by an order dated 22-4-85 under section 1A of the company's Act and in fact on behalf of the Society by Sri Ram Kumar Singh. Consequently Sri Krishna Lal was the Manager of the Society and the new Society was ordered

on 26.12.1992 and it was the signature of Sri Eng. Rav. Lal, which had been recorded in the District Inspector of Schools all along and the signatures of Ram Kumar Singh were recorded by the District Inspector of Schools on 1.1.1993 in consequence of the intervention which were held on 26.12.92. The District Inspector of Schools was then engaged dealing with the Committee of Management of which Ram Kumar Singh was the Manager of the dispute was referred to him on 16.1.1993 stating the Committee as the validly constituted Committee of Management of the Institution. Further the signature of the Society, which has been in issue, the Committee from the very beginning was not got entered by Ram Kumar Singh and a certificate of registration dated 23rd Nov. 1992 bearing registration certificate No. 2889-92-80 was in operation when the dispute was raised by the petitioner and the Society signed by the representative the real and original Society which has been running the Institution from its inception. The petitioner never made any personal affidavit or otherwise of the Management of the Institution in pursuance of their certified election affidavits to have been held on 31.7.1992.

4. For the petitioner Sri B. C. Upadhyaya contended that the registered order suffered from a patent illegality in that the Deputy Director Education has failed to record any finding regarding effect of the two Committees was in effective control of the Institution. It was urged that the basic thing to be examined under S. 16-A(1) was whether of the two real Committees it is actual control. The Deputy Director Education concerned has acted in pre-occupying himself wholly with the question of the validity of the elections held by the two Committees.

5. We are unable to agree. In our opinion the Deputy Director Education did address himself to this question and gave a clear and unequivocal finding that the Committee of Management represented by Sri Ram Kumar Singh was effectively control. After setting out the facts and contentions of the two parties, the Deputy Director Education has observed that from an examination of the material

brought on the record of the case and upon having the two affidavits was clear that the Committee of Management of which Sri Ram Kumar Singh was the Manager had been elected by the majority of the members. Also Sri B. C. Upadhyaya, Deputy Director Education and a representative of the petitioner who, it was in effect, and actual control of the affairs of the Institution at all times, viz. was referred by the District Inspector of Schools. He has in this observed that the District Inspector of Schools was dealing with the two Committees at the time of reference of the dispute, unlike Deputy Director Education. The Deputy Director Education has also referred to a letter of Sri Arunachal Chandra dated 26.12.92 addressed to the District Inspector of Schools who, it is stated that Sri Eng. Rav. Lal, the Manager of the former Committee of Management was appointed as an ad hoc Manager. Therefore, ultimately the signature of Ram Kumar Singh was entered by the District Inspector of Schools on 1.1.1993. He has also observed that the registration of the Society, which Sri Ram Kumar Singh had obtained, had been cancelled by the Registrar and that it, Society which is alleged to have obtained the petitioner Committee of Management on 31.7.92 is different from that which has been running the Institution from the beginning. On the other hand, the Society, which Sri Ram Kumar Singh got registered appeared to be the real Society which has been running the Institution since its inception and it has been recognised by the Registrar. The Deputy Director Education has observed to not rely on the order of the Registrar dated 12.4.93 whereby the registration of the petitioner Society was cancelled and that set up by the respondent was recognised.

7. The fact that at the time when the dispute was referred the District Inspector of Schools had recognised and was dealing with the Committee of which Sri Ram Kumar Singh was the Manager and also prior to Ram Kumar Singh the District Inspector of Schools was dealing with Sri Eng. Rav. Lal, the representative of Ram Kumar Singh as the legally elected Manager of the Institution were both taken into account for arriving at the conclusion that it is the respondent's Committee which was in actual control. The Deputy Director Education was entitled to rely on these









decided that "to rely upon the petition filed Bengali. The petitioner being aggrieved by the order dated 28th May 1973 filed a revision before the District Judge in regard to the decision in case of his petition. The District Judge by an order dated 18-1-1973 dismissed the revision before and upheld the order of the trial Court. While dismissing the revision, only the provisions of S. 14 of the Act were considered and the revision was not admitted on all objections being made the reasoning was given above the finding and in spite the fact as question cannot be raised by the principles of law petition. Aggrieved by the decision dated 18-1-1973 as well as due to the trial Court the present petition has been filed in this Court.

5. I have heard the learned counsel for the parties at length.

6. Learned counsel for the petitioner has contended that the findings recorded by the subordinate judge, the Act will operate as res judicata as a subsequent suit. The argument is that the C. P. Urban Findings (Regulation of Lodging Room and Premises) Act 1972 is a self contained Code. The decisions given by the authorities under the said Code are final. They have exclusive jurisdiction for the said dispute and hence has been attached to these decisions. In the circumstances, any decision given in proceeding under the Act will have the effect of res judicata as a subsequent proceeding.

7. Learned counsel for the respondents however has urged a reply that the proceedings under S. 14 of the Act come to the possession of a person under the provisions of the Act. Only the compensation to be lodged on the vacancy given by the District Magistrate. No decision is given to release the property, to be given and except any decision given in these proceedings would not effect a suit filed subsequently for declaration of the vacancy against the owner of the property in dispute. He has further urged that an application under S. 14 of the Act is maintainable and consequently, any objection made regarding it to be a proceeding under S. 14 of the Act is wholly without jurisdiction and any decision given in a proceeding without jurisdiction cannot possibly operate as res judicata. He has further urged that in any case the finding given by the

authorities under the Act was only for the purpose whether proceedings be maintainable against the petitioner. Bengali or not and a subsequent person those proceedings cannot operate as res judicata and the findings by the Court below does not suffer from an essential error of law.

8. Section 11 of the Code of Civil Procedure lays down that no Court shall try an issue on which the parties directly and substantially at issue has been already and substantially at issue in a former suit between the same parties or between parties under whom they or any of them claim, issuing under the same title in a Court competent to try such subsequent suit in the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. Admittedly, under clause 11 of the Code of Civil Procedure does not seem to apply to the instant litigation in respect of which the operation of res judicata has been raised as a defence given by a party under the C. P. Act 1972 of 1972.

9. The question which I have to consider in the instant case is whether the principles of res judicata are applicable to the facts of the present case or not. In *Smt. Raj Lakshmi Das v. Ramnath Sen*, AIR 1973 SC 11, it has been specifically laid down by the Hon'ble Supreme Court as follows:-

"Where a plea of res judicata is founded on general principles of law, all that is necessary to establish is that the Court that heard and decided the former case was a Court of competent jurisdiction. It does not seem necessary in such cases to further prove that a bar jurisdiction to hear the last suit. A plea of res judicata on general principles can be successfully taken in respect of judgments of Courts of appellate jurisdiction like revenue Courts, local government Courts, appellate Courts etc. It is obvious that these Courts are entitled to say, a regular suit and they only exercise general jurisdiction conferred on them by the Statute.

10. In *Ram Lal v. V. B. Adhikari* District Judge (1973) P. B. Bench (1973) (1973) 1 C. Bench, 1 Indian comments consider whether the findings in a proceeding under the Rent Control Act would operate as res judicata as a subsequent suit. It was held

A 1971 of 1970s —

The application pertaining to the First Court's decision has also contained evidence that even in 1971 cases in Courts and in regard to other citizens the provisions of Titles 10 of Paragraphs 1st and 2nd of the said Law were applied. The Courts under the L. P. Act 10 of 1970s applied Paragraphs of Titles 10th and 21st of the said Law and Courts of justice in Armenia and Leningrad have been a school in their decisions. Besides, 21 of the said Law indicates that "in order to make use of the person's informed to, or under the law that he refused a question in any Court

13 In view of the above it has been held that the principles of the judgments are also applicable in regard to the findings presented in the L. P. Act 10th of 1970 by the Courts under the said Act, even though the said Court may not be competent to ascertain the defendant's guilt.

12 I respectfully agree with the decision given by Honorable L. C. Grechenev, 1st of the court of Baku City 1975, 1st Baku District Court 20th August.

13 The L. P. Act 10th of 1970 was promulgated by the legislature with a view to provide at the instance of general public for the regulation of income and payment of income from certain classes of buildings situated in urban areas and for matters connected therewith. Specific provisions are found in the Act in respect of those properties which come under the purview of the Act as to the manner in which the property will be in use, when it will be for use and who will be the rent payable in respect of the said building. In fact a statutory liability has been created by the Act. The strict liability of the properties as well as payment of rent, a government for the various provisions of the Act. If a person is aggrieved by a decision given by an authority under the Act specific provisions are made as to when the aggrieved person can go for appeal. On an analysis of the Provisions of the L. P. Act 10th of 1970 it appears that it is a complete Code by itself. It provides for appeals, revision against the orders which the legislature thought fit to be challenged by the person aggrieved. Accordingly, under rule 5.27 of the Act goes finally to the orders passed under the Act and consequently, it was

open to the person to go for appeal under the provision of any other statute, or under the law that he called a question in any Court. Therefore, it seems that the courts exercising jurisdiction under the Act are courts of exclusive jurisdiction and consequently, the findings of the courts under the Honorable Supreme Court in the Leningrad District Court 1975, 1st District Court 20th August, apply to the decision given by the defendant, defendant under the Act. For the reasons stated and as mentioned in the learned counsel for the plaintiff, the principles of the judgments should be applied in the case at hand.

14 In the instant case, Babu Singh had made an application under 5.27 of the Act before the District Magistrate at that time and was the transferee for an amount under the Act, which was not mentioned by the District Magistrate. The District Magistrate, considering the application of Babu Singh, a relative finding the premises had converted to a place of residence under the Act had gone into the question as to whether he was a tenant of the premises or not, whether he was a tenant or not, whether he converted the premises to a place of residence, the provisions of the Act or not. The decision on this matter

was a question reserved for the decision on an application under 5.27 read with 5.24 of the Act. It was because of the application of Babu Singh that the person who converted the premises to a place of residence was a tenant of the premises or not. After examining the voluminous documentary evidence on record, the Additional District Magistrate by an order dated 10th October 1975 recorded a finding that when 20th December 1970 when Babu Singh left Atabekov, the landlord had become the tenant of Babu Singh. The finding admitted Babu Singh to be his tenant by, he a Babu Singh 10-10-1970 and this document was of Rs. 100 per annum was being paid regularly since December 1970 by Babu Singh to the landlord. These findings were based on documentary evidence on record. Babu Singh thereafter challenged these findings before the Commissioner. The Commissioner by an order dated 2-4-1971 affirmed the finding recorded by the Additional District Magistrate. As I have already held above the Additional District Magistrate was not without competent to decide the question which arose because of an application moved by Babu Singh and

having come to a decision that Brough was the tenant of the premises in dispute and the landlord, accepted the case from him were decisions which became final between the parties as the order of the Commissioner was not challenged by Brough's claimant. The findings, therefore, recorded in proceedings under § 31(1) of the Act would clearly operate as res judicata on the principles mentioned above.

(6) The argument of the learned counsel for the respondent that while authorising filing of complaint the court cannot go into the question of tenancy is no answer, cannot be accepted. Before the District Magistrate could consider as to whether any offence had been committed by a person, he has to find out whether the person against whom proceedings are sought to be initiated has actually violated any provision of the Act, as to whether he is a tenant of the premises in dispute and as to whether his occupation was authorised or unauthorised.

(7) Great emphasis has been placed by the learned counsel for the respondent on the observations made by the learned Additional District Magistrate in his order dated 14th October 1979 that by virtue of the provisions of § 31(1) of the Act, the possession of Brough had been extinguished. § 34 of the Act confers tenancy upon those persons who have come in possession of the building with the consent of the landlord prior to the commencement of 1974 Amendment Act, the legislature required such persons and made such tenancy a registered tenancy.

(8) Specific reliance has been placed by the learned counsel for the respondent on a Division Bench decision of the Court in *Zard Akmal v. Dist. Control and Revenue Officer, JMC-88 Raza-Cas-281*. The Division Bench of the Court held that the application for replacement of occupants under § 14 of the Act is not maintainable and so such the purported authority had no jurisdiction to entertain such an application and consequently the orders proceedings before the purported authority are without jurisdiction. In my opinion, the principle laid down in the case does not apply to the facts of the present case as all, in the present case, no application has been made under § 14 of the Act. The order which has been passed by the Additional

District Magistrate is not under § 14 of the Act. The order has been passed under § 30(2) of the Act and in such a matter he said that the order dated 5.10.1979 is without jurisdiction. In fact in the present case, the Additional District Magistrate has recorded comprehensive findings that Brough was one of the persons in dispute. The Additional District Magistrate further only observed that by virtue of the provisions of § 31 of the Act the possession of Brough could be extinguished, that is a tenancy which was confirmed by law on Brough. No declaration was required by the respondent. In the circumstances, it seems to me that the order dated 14th October 1979 is without jurisdiction. The principle laid down in the case of *Zard Akmal* would not, in my opinion, apply to the facts of the present case.

(9) Learned counsel for the respondent however has further supported the findings given by the courts below on the ground that whatever finding was recorded by the Additional District Magistrate would serve as res judicata under the Act but that does not deter the civil Court to dispute the question of tenancy. In my opinion, the question is also fallacious. Once under the provisions of § 31 of the Act the Additional District Magistrate had to go into the question whether a tenancy had been created or not as the part of the premises Brough and a finding in that effect was recorded, that would operate as res judicata in all subsequent proceedings. The Court of Additional District Magistrate as observed earlier is a Court of exclusive jurisdiction and if any finding was recorded after considering the evidence on record, that finding would clearly in my opinion, operate as res judicata and the question of question cannot be reopened on that basis.

(10) In the result, the petition is allowed, the orders dated 1.8.1977 and 30.5.1982 are hereby quashed. The findings recorded by the Additional District Magistrate in his order dated 14th October 1979 to the effect that Brough is a tenant of the premises in dispute shall operate as res judicata in the present suit. A writ of mandamus is issued to the civil Court for discharge of the suit in accordance with the observations made above. In the circumstances of the case, the parties are dismissed in law from this suit.

Pravara allowed

1968 A.L.J. 1, 2 201

S. R. DELACROIX AND S. L. JAFFEL II

Bernard Choud and others: Appellants' Issue no. 1, P. Respondent

Criminal Appeal No. 2004 of 1977. D. 17, 1980.<sup>1</sup>

(A) Evidence Act (1 of 1873), S. 3 — False witness — Parties witness through maliciously disposed towards accused, their evidence cannot be treated with caution in that regard — Their evidence can very well be relied upon for opposing appellants if it is carefully scrutinized. (Para 20)

(B) Criminal P.C. (1 of 1904), S. 302 — Statement of accused — Charge of murder — Prosecution failing to establish its case — Accused pleading conspiracy as contained in S. 106 of I.P.C. but failing to discharge burden lying upon him s/s 102 of Evidence Act — Statement of accused cannot be discarded and corroborating part could not be picked out for conviction of accused by relying on a third one against accused. (Para 24, 25)

(C) Penal Code (46 of 1860), S. 304 — Evidence Act (1 of 1873), S. 3 — Murder case — Appreciation of evidence — Prosecution case of accused having against the facts favourable from that of nearly known — Absence of rifle wounds on picture of injured or deceased — No police recovered from scene of occurrence — Cash loan brought home to accused

Where the prosecution case was that of the accused had injured the first the next of the victim near the scene of occurrence, wounds injured was the deceased from a height of 12 to 13 feet from ground level, but there was complete absence of any rifle wound injury on picture of injured and the deceased and no police in the scene of occurrence where the injured and the deceased were lying were found by the investigating Officer prosecution having failed to bring before the judge to the accused beyond doubt, the accused could not be convicted. (Para 22, 23, 24)

<sup>1</sup>Against judgment and order of K. C. Margosa, J. and S. L. Jaffel, J. D. 17.12.1977

Cases Related Chronological Form  
1962 A.L.J. 100 1964-65-Cr. L.J. 700 21

A. Joseph, P. C. Choudhary, P. K. Tanna, N. P. Mishra, S. K. Sen and S. S. Sharma, for Appellants S. N. Math, J. N. Math, Deputy Government Advocate and P. N. Mera, for Respondents

S. L. JAFFEL, J. — Bernard Choud, Prakash Choud, Narsinh Choud and Sita Ram have filed their appeal against their conviction and sentence under Sec. 302 (a) and 307 (a) I.P.C. recorded by J. K. C. Margosa, J. and Additional Sessions Judge, Muzaffargarh in judgment and order dated 24th December 1977. They were sentenced to undergo life imprisonment for a year E. I under the abovementioned sections of the Penal Code respectively. Together with the appellants Bernard Choud S. N. Bhagwan, Sonu, Khemrao, and Chander N. M. also prosecuted but this was acquittal in the trial Court. The Court of A. P. did not file any appeal against their acquittal, and therefore we are left to deal with the case of the present appellants who had preferred the appeal.

2. The appellants Prakash Choud, Narsinh Choud and Sita Ram are brothers and likewise the sons of Subash Choud. Bernard Choud is the son of Sita Ram Choud who is the brother of Subash Choud. In this way, Bernard Choud, appellants, is related to the appellants being their sons.

3. Bernard Choud, appellants, used to live together with the double barrister, Prakash Choud with wife, Narsinh Choud with his wife and Sita Ram with his family, who were paid as the sons of the deceased, whereas the accused accused namely, Bernard son of Bhagwan, Sonu, Khemrao and Chander were alleged to have been armed with Pistols.

4. The appellants are the residents of village Algaon, Police Station Thana, District Muzaffargarh. The deceased also belonged to the same village and both the parties are Tugri by caste and they are neighbours as well. It is alleged that From P. W. 1, Odhar P. W. 2, Sathana and Ram Kishan had received a call on 12th 1976 towards the south of Bara Chak shows in letters A and B in the pictures (a) Ka is paragraph, Say Ram P. W. 1 the investigating Officer of the case and while the wall was being constructed by them,





sweep on the floor body of *Archibius* at 4 P.M. on 14/12/86 and found the following one-to-one squares on his person:

1. Two *Archibius* each  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  — 1' apart on upper part chest and right side.

2. Two *gambus* *Archibius* each  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  & *gambus* *Archibius* variety follows each other just below the right nipple (deep) at single-same place on right side chest. One square No blackening or covering present.

3. Seven *Archibius* each  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  on front of chest wall middle lower part.

4. *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  on upper part sternum middle.

5. Two *Archibius* each  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  on — 1' apart on upper part chest wall right side.

6. Two *gambus* *Archibius* each  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  & *gambus* *Archibius* variety 2' below right nipple at T-10 level, position jump on depth 4th and 5th stern costal space. No blackening or covering.

7. Two *gambus* *Archibius* each  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  & chest cavity deep and each other — close up left nipple at T-10 level position — on sternum/covering.

8. *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  left side abdominal wall middle.

9. *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  on left side abdominal wall lower part.

10. Two *gambus* *Archibius* each  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  & chest deep in front of upper part left thigh no blackening, covering present.

11. Six *Archibius* each  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  & muscle deep on outer part waist area of 5'' x 4'.

12. *Gambus* *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  & muscle deep on outer part left arm area blackening or covering.

13. *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  on back of lower 2nd left forearm.

14. Three *gambus* *Archibius* each  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  & muscle near each other on back of lower part left forearm no blackening or covering.

15. Breast with *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  back of middle right forearm.

16. *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  on back of lower part right forearm.

17. Breast with *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  on back of lower part right arm.

1. *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  on back of forearm or right hand middle.

2. *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  on back of forearm of left hand middle part.

The Doctor attended the case of *Archibius* chest and lower body as a case of *Archibius* square. Doctor N.C. Sharma P.W. 1 examined the square of Prakash, appellant on 15/12/86 on 10/12/86 in the District Jail Bhagalpur. He had found the following square on his person:

1. Breast square  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  & muscle deep on the right side of the chest  $4\frac{1}{2}''$  above the right nipple at T-10 chest position middle.

2. Scapula *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  on the two side abdomen 2' away from umbilicus at 4-10 chest position.

3. Scapula *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  on the outer border of right scapula.

4. *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  on the outer side of right thigh 1' above the knee.

5. *Archibius* *Archibius*  $1\frac{1}{2}'' \times 1\frac{1}{2}''$  & chest deep on the front of right leg 1' — above the ankle.

18. According to the report of the Doctor, *Archibius* were simple and they were about 2 days old.

19. After completing the investigation, Sri Ram P.W. 2 submitted charge sheet No. 17 against all the eight accused persons.

20. One of the appellants, Kamath-Chand stated in his statement under S. 303 Cr P.C. that Sundara, Kachara and Quresh P.W. 1 were constructing a wall in front of his door which opens on the northern side towards the Chauraha. His brother Prakash asked these persons to stop the construction but they continued to construct the wall whereupon Prakash started demolishing the wall with a wheel during so Prakash was assisted by them by means of their own hands. Prakash fell down on the ground on removing the square and at that time Prakash, he had opened two times his gun as a result of which Sundara, Kachara and Ram Kachara had sustained the injuries. A similar statement was given by Prakash, appellant in his statement also under S. 303 Cr P.C.

21. Sri Ram, appellant stated that on the

one of occurrence. He was not present at the village as he had gone to visit the L. P. Co-operative Land Development Bank in Sathiyam, Dindur, Madras. All the witnesses appeared denied their presence at the occurrence.

14. The appellants examined Dr. N. C. Sathya (D. W. 1), Nannan Nannan (D. W. 2), Hari Thevar (D. W. 3), Joseph Prasad Agrawal (D. W. 4) and Shri. Raj Singh (D. W. 5) at their distance. The trial Court also examined Sri S. C. Garg (C. W. 1) and Tejsh Chandra (C. W. 2).

15. The prosecution examined in all 10 witnesses in support of its case and out of them P. W. 1, Oshar P. W. 2 and Oshar P. W. 3 were examined as corroborators of the occurrence.

16. The trial Court did not rely on the testimony of Oshar, P. W. 3 and held that he was not present at the scene of occurrence as he had reached there at a late stage. Witness was, naturally, and carefully gone through the evidence of Oshar, P. W. 3 and we not in complete agreement with the reasons given by the trial Court in not placing reliance on his testimony. We are now left with the evidence of complainant Pyam, P. W. 1 and his nephew Oshar Singh, P. W. 2 in support of the prosecution case.

17. Pyam, P. W. 1 deposed in evidence before the trial Court that he, Kacharu Sathyan, Oshar, P. W. 3, Sathyan and Raju Kacharu were sitting on two cows in front of the Gate of Chathurang in the Gali at about 2 or 2.30 P.M., and were enjoying Radda in the form of resistance when all the afternoon eight armed persons armed with their respective weapons entered above gate at the wall of Mullar and out of them Ramachandran, appellants met and finally that they would reach there before for constructing the wall had started firing resistance, with the result that Oshar P. W. 3, Raju Kacharu, Kacharu and Sathyan had received gunshot injuries. Kacharu informed him of the killing of Vallabhaiah and mentioned to his injuries immediately on the spot. He mentioned also the occurrence he went to the police station and since he had lodged his report of the occurrence. He further stated that one day prior to the occurrence while they were constructing a wall on the western side of their Gate on their land,

Prakash and Parash, appellants were at there at about 3 A.M. and commenced their work constructing the east wall but on their return to complete construction of the east wall, appellants Prakash and Nannan had threatened them and said that if they wall was about from constructing the wall, they would be present at one after the return of Sathyan and Sathyan, as witness at the village. He submitted in his cross-examination that all the 8 a good 40 years had lived with their arms openly shown from the wall of Mullar. It is also an admission case of the prosecution that the wall of Mullar stood at a height of 13 to 14 feet from the ground level where Pyam, P. W. 1 and others were sitting on two cows. He also admitted that the Mullar had also been hit by people during the resistance but he did not mention the fact in his report. He further admitted that the the-buffalo was tied to a Kooma (peg) fixed in the eastern wall of the house of Sathyan on the Chathurang on the western side. P. W. 1, Sri Ram, the Investigating Officer had also admitted in his cross-examination when he arrived at the place of occurrence, he had forced the the-buffalo tied to a Kooma on the eastern side of Chathurang on the north western corner of the house of Mullar. He further stated that the the-buffalo was tied to some tree, which was fixed on the wall of the house of Mullar. He also deposed that the abductor the-buffalo had sustained great injuries. It has also been admitted by Pyam in his cross-examination that the houses of Sathyan, Kacharu Ram and Raju Ram are situated on the northern side of the place of occurrence at some distance. He stated that there was no report of firing on the wall of Kacharu Ram at a distance of 13 to 14 feet from the level of the ground. In cross-examination, he denied the suggestion that they were constructing the wall in front of the northern door of the appellants Ramachandran on the day of occurrence and when Prakash, appellants started to demolish it, said wall, they fell upon him proving injury by means of Lathi and gun and it was as a fact to state the fact of Prakash that Ramachandran had opened fire from his loaded gun causing injuries to the injured and deceased. He also denied the suggestion the presence of Prakash, appellants.

18. Oshar, P. W. 2 is a nephew. He is the nephew of Pyam complainant. He had corroborated the statement of Pyam, P. W. 1

to the situation at the time of occurrence. In along with Pyare, Kachera, Ram Kachera and Sathana were sitting on the floor in front of the house of Va. Shankar on two mats, and they were watching Haldar at that time when all the eight accused persons aimed and fired their respective weapons towards the top of the roof of Mithar and Ramach appellant after having palmers fired one bullet, this they would be given instant, by surrounding the wall and trying this all has occurred, had started from towards us with the noise, for Sathana, Ram Kachera and Kachera, had remained against the wall and then Kachera after receiving the injuries, had down to the ground in the gallery of Va. Shankar and towards his last position only on the spot. He also stated that immediately when injured by the Doctor. He also deposed that at the time of occurrence on receiving injuries, blood had oozed up from their wounds but it did not fall on the ground. He also denied the suggestion that they had constructed a wall in front of the northern door of appellant Ramach and as the circumstances made by Prakash appellant, he was assaulted with belts and spears by them and by way of obtaining the life of Prakash, appellant Ramach had opened fire, from his injured gun towards them, with the result that for Ram Kachera, Sathana and Kachera had sustained injuries.

18 The defence examined Dr. X. C. Sharma to prove the injuries on the person of Prakash appellant. The above said doctor stated that he had examined the person of Prakash at 9:05 A.M. on 15.9.1996 in the District Jail and according to him, injury No. 1 on the person of the appellant was caused by the edged weapon like dagger and the rest of the injuries with lacer. He also considered it a probable that injuries were caused in the assault Prakash on 14.9.1996. Dr. Sharma was cross examined by the prosecution, but no suggestion was given for the doctor that the accused was the author of Prakash appellant could be increased or not affected.

19 Sri Purn appellant placed able. He examined Hari Shankar D. W. 3 and J. P. Agarwal D. W. 4 by defence. Hari Shankar who is a Junior Assistant Audit Officer stated that on the day of occurrence, Sri Ram accused was working as a clerk at Sathana, District Manna, and he had given the Tour

programme which he had given, I. P. Agarwal D. W. 4 stated that on 14.9.1996 he was called in Local Development Cooperative Bank, Sathana and on that day, Sri Ram accused had worked for Bank from 10 A.M. to 2 P.M. and he had checked the opening balance in the cash book and he had also signed on it as he permitted. Hari, who permitted to state that Sathana lies at a distance of 30 miles from the place of occurrence and, therefore, much importance cannot be given to the evidence of able in view of the fact that a man can cover easily a distance of 30 miles by means of road transport within an hour and, therefore, the alibi of Sri Ram accused is of no help to him.

20 It cannot be disputed that both the witnesses Pyare and Oskar Singh are highly persons and they are also materially dependent persons for whom the other evidence cannot be treated with merely on the spot. These evidence can very well be tried upon for covering the appellants if a person through the usual living on the neighbourhood of reliability. The only requirement of law is that the evidence of accused witness has to be carefully examined in order to place reliance on the testimony.

21 Sri C. S. Janna, learned counsel for the appellants argued that the story set up by the prosecution that all the eight accused who were armed with double barrel guns, rifle revolver and Katas, immediately made pursuit has fired towards the witness after venturing on the ground on two mats from the roof of Mithar is completely demolished by the medical evidence adduced in this case. The learned counsel submitted that the three injuries of Sathana and the single injury of Oskar P. W. 2 are of the size of 1 cm. X 1 cm. and that the size of the injuries, it appears that they are the outcome of a single shot by a 12 bore cartridge. The learned counsel further submitted that the gun shot injuries of the deceased also appears to be the result of one gunshot injury caused by 12 bore cartridge of 1.0 inch. All these injuries are on the front portion of the deceased. The learned counsel for the appellants further stated that in Sathana injury, examination the presence of Ram Kachera alleged to have been injured by gunshot on medical examination. It is significant to note that there is complete absence of any rifle or





**1964 ALL E. 2 393**  
**= ALL HM Revenue Cases 396**  
 (From "Maxwell")  
**V. D. TILKAPLEKHAR AND**  
**B. E. PATILKAR, JS**

Civil Appeal No. 1238 of 1959. D. 19 11 1964.

Commissioner of Sales Tax, F. Appellate  
 Maxwell & Berry Ltd. Respondent.

**U.P. Sales Tax Act 18 of 1948, S. 3 =**  
**Notification No. 57 3224/K 34244 1948**  
**Art. 17 1948 = "Paper other than hand made**  
**paper" = "Machine paper and linen paper do**  
**not fall within the entry "Paper other than**  
**hand made paper" in the notification = Lathin**  
**is to read as reclassified goods = 580 1959**  
**AC 158 Disagreed.**  
 (From 7)

**Cases Related Cited/Noted From**  
**ALL 1959 AC 189 1959 2 SCR 158 1959 Co**  
**11 1845 4**  
**ALL 1957 SC 132 39 STC 8 1957 Tax LR**  
**1801 4**  
**1974 Tax LR 1304 21 SSC 333 (Orissa) 4**

Mr. J. C. Mandalia, for Appellant Mr.  
 B. A. Gupta, and Mr. Upal Singh, Advocate  
 with him, for Appellant. Mr. S. T. Sena, for  
 Appellant. Mr. B. S. Pan, Mr. M. P. Tandon,  
 and Mr. Ramesh Chandra, Advocates with him,  
 for Respondent.

**FATHAR, J. —** The first question in  
 the appeal is, special issue whether machine  
 paper and linen paper can be described as  
 "paper other than hand made paper" for the  
 purposes of the notification No. 57 3224/K  
 34244 1948 issued July 1, 1948 issued under  
 the U.P. Sales Tax Act, 1948.

**J. —** The respondent's argument is a machine  
 machine and drawing material, and also  
 machine paper and linen paper. In numerous  
 proceedings under the U.P. Sales Tax Act,  
 1948 for the assessment year 1948-49 the  
 revenue claimed that machine paper and linen  
 paper were liable to tax as reclassified goods

as the use of new jute cloth permitted by S. 3  
 of the Act. The documents not accepted by the  
 Sales Tax Officer who held that machine  
 paper and linen paper fall under the entry  
 "paper other than hand made paper" included  
 a notification No. 57 3224/K 34244 = 1948  
 dated July 1, 1948 and no income was  
 assessed. Lathin is not a jute cloth. Against  
 the assessment was made the Ministry objected,  
 but his appeal was dismissed by the Revenue  
 Commissioner (Judge). Sales Tax Act on one  
 person by the revenue. Lathin was  
 assessed by the Revenue Authority. As the  
 nature of the assessment is reference was made  
 to the Assessed High Court is opening in  
 the following question:

"Whether machine paper and linen paper  
 fall within the entry of paper?"

**2A. —** The High Court has expressed the  
 view that machine paper and linen paper  
 being chemically treated paper used for  
 drawing prints and sketches of silk plants  
 were paper in which a chemical process had  
 been applied and mechanical coming had been  
 given, and was not paper in the proceedings  
 of the court, and therefore did not fall within  
 the entry in the amended notification of July  
 1, 1948. Accordingly it answered the question  
 referred to it in the negative. In favour of the  
 assessee and against the Commissioner of Sales  
 Tax.

**3. —** In the appeal, the entire construction  
 of the Commissioner of Sales Tax is  
 the order of the High Court is the entire  
 a machine and that gives a proper view  
 machine paper and linen paper must be  
 regarded as "paper other than hand made  
 paper" under the meaning of the amended  
 notification of July 1, 1948.

**4. —** Section 3 of the U.P. Sales Tax Act  
 charges tax on goods sold by a dealer in a  
 specified rate, the charge being imposed on  
 every sale in the series of sales through which  
 the commodity, this year, coming from  
 the manufacturer to the ultimate retail dealer.  
 It imposes a single point tax. Section 14 of the  
 Act, however, provides for the imposition of  
 sales tax on one only of the sales of the  
 commodity in the series of sales, the single  
 point being specified by notification by the  
 State Government. If machine and linen paper  
 fall under the entry "paper other than hand

made paper" mentioned in sub-clause (1) of § 2 of the Act — 1961 dated July 1, 1961 (the carrier or of asbestos and lime paper sold by the assessee liable to tax under the Act). The charge is imposed on the sale rather by the manufacturer or by the exporter. Presumably, the intention is to tax the manufacturers of asbestos paper or lime paper or their exporters. If asbestos paper and lime paper do not fall within the aforesaid definition, the assessee is not liable to tax. Consequently, under § 2 of the U. P. Sales Tax Act, as two per cent on every sale in the series of sales through a dealer for goods pass.

4. According to the facts admitted between the parties, the following series of facts in the assessee's previous process explains apparently the nature of asbestos paper and lime paper:

The lime and asbestos paper is made of paper of rough and unevenness by applying technical process and giving the reinforcing fibres. The chemicals which are used are the tartaric acid, nitric sulphuric glycerol and some other chemicals. These chemicals are absorbed by the base paper and the covered paper is again passed through another set of rollers so that the chemicals are properly and evenly impregnated in the base paper. It is only this chemical-soaking which is important for making the use of asbestos and lime paper effective in a machine for as pressure rough base paper. This lime and asbestos paper is used for the purpose of obtaining print and is made of six plies and is used as an ordinary paper because of these special treatment and its chemical properties.

5. The paper is used for preparing print and transfer of the plate. An impression of the print or directly a copy on the paper and it is then exposed to light for a period of time during which the chemical impregnation in the reinforcement of the print or blank of the air plate. Finally, asbestos paper and lime paper is used for regarded as paper in the popular sense of that term. Paper is used for printing or writing or for packing. Asbestos paper and lime paper are not employed for any of the purposes and referred to any of the purposes for which paper is commonly understood, is generally used, in State of U. P.

6. Koon (India) Ltd. (1971) 39 STC 1 — 148 (1971) 125 the Court held that asbestos paper was not paper as envisaged by the relevant entry in schedule IV. See AT 224/71 (1971) — 146 dated July 1, 1971 and referred to the fact that certain paper was manufactured by coating heavy paper with a thin layer of oil, based mainly on facts that drying oils, patterns and then an amount of insoluble coating roller and equipping roll and then passing it through clothed rolls. It is said that one two sheets of glass paper is used as substrate on the lower sheet, this which is coated or paper on the upper sheet, making a replica of carbon copy of the original document. The learned Judge observed that carbon paper could not be applied to the same case in which paper is generally understood, was said, that it is used for preparing, writing or printing or for packing or drawing on or for drawing or covering the walls of a room. Hence, the learned Judge appears to have approved of the City Judgment under appeal when considering the question whether carbon paper could be regarded as paper to be the intended destination. Learned counsel for the Commissioner of Sales Tax has raised one question: Whether Black Copies, General Copies (1971) 2 STC 128 (1971) 29 STC 128 where the Court held that that carbon paper was included within the term paper mentioned in sub-clause (1) of § 2 of the U. P. Sales Tax Act, 1961 and in item 13 of Schedule I in the General Excise and Duties (Regulation) Order, 1971. The learned Judge supported this conclusion by reference to the object and purpose of the Act and the Regulation Order. This case in our opinion is distinguishable from the present case. On the contrary, more to the point is the decision of the Orissa High Court in State of Orissa v. Commercial Duplication (P) Ltd. (1974) 30 STC 220 (1974) Tax LR 2974 where it was held that carbon paper was not paper within the meaning of item 13 of the Schedule to the Excise and Duties (Regulation) Order issued by the State Government under the first proviso to sub-clause (1) of the Orissa Sales Tax Act, 1947.

7. Accordingly, we agree with the High Court that asbestos paper and lime paper do not fall within the entry, paper under item





ing Agricultural High Court and on December 19, 1979 the High Court allowed the writ petition holding that where the Central Government could take action to regulate the industry, that is regulation of sugarcane throughout during the sugar cane season, it was the sugar undertaking which the union attacked; and the union was not entitled to be treated pertaining to a processing sugar year, and therefore the sugarcane order was denied. The order dated December 1, 1979 and the consequential order were quashed and the application was directed to hand over possession of the sugar undertaking to the respondent.

4. The Chairman has sometimes referred by the Sugar Undertaking (Taking Over of Management) Act, 1979 without what regulating the Chairman accepts everything, does it come, takes under the Chairman as it had been done or taken under the corresponding provisions of the Act.

5. The Provisions of the Sugar Undertaking (Taking Over of Management) Act, 1979 (hereinafter referred to as the Act) render that for maintaining the continuity of production of sugar for meeting public demand to save profiteering farmers and to best interest the interests of all workers of the people is an independent public interest to provide for the taking over for a limited period the management of every sugar undertaking which fails or ceases to manufacture sugar or which fails to do so promptly amounts due for the cane required for the purposes of the undertaking. Section 1(2)(b) of the Act provides:—

“(1) Where the Central Government is satisfied—

(a) that any sugar undertaking has in any sugar year failed or threatened the manufacture of sugar or, or before the specified day in respect of that year or having started the manufacture of sugar or, or before that day ceased to manufacture sugar before the expiry of the average period of manufacture of sugar in relation to that undertaking; or

(b) that on any day in any sugar year any sugar undertaking has in relation to the cane provisions before that date for the purposes of the undertaking, amounted cane due to the

Union of India in any sugar year failed or threatened to manufacture sugar or, or before the specified day in respect of that year or, or having started the manufacture of sugar or, or before that day ceased to manufacture sugar before the expiry of the average period of manufacture of sugar in relation to that undertaking; or

(c) that on any day in any sugar year any sugar undertaking has in relation to the cane provisions before that date for the purposes of the undertaking, amounted cane due to the

Union of India in any sugar year failed or threatened to manufacture sugar or, or before the specified day in respect of that year or, or having started the manufacture of sugar or, or before that day ceased to manufacture sugar before the expiry of the average period of manufacture of sugar in relation to that undertaking; or

“(2) Where the Central Government is satisfied—

(a) that any sugar undertaking has in any sugar year failed or threatened the manufacture of sugar or, or before the specified day in respect of that year or, or having started the manufacture of sugar or, or before that day ceased to manufacture sugar before the expiry of the average period of manufacture of sugar in relation to that undertaking; or

(b) that any sugar undertaking has in any sugar year failed or threatened the manufacture of sugar or, or before the specified day in respect of that year or, or having started the manufacture of sugar or, or before that day ceased to manufacture sugar before the expiry of the average period of manufacture of sugar in relation to that undertaking; or

(c) that any sugar undertaking has in any sugar year failed or threatened the manufacture of sugar or, or before the specified day in respect of that year or, or having started the manufacture of sugar or, or before that day ceased to manufacture sugar before the expiry of the average period of manufacture of sugar in relation to that undertaking; or

The expression ‘sugar year’ has been defined in section 3 of the Act to mean the period of twelve months commencing on the 1st day

of October and ending with the 15th day of September next following. Suba. 1, 10 of S. 3 of the Act provides that a sugar producer cannot make suba. 13 for setting the management of a sugar undertaking in the Central Government until, as a basis for such period not exceeding three years from the date of ending of this, he specifies the conditions under which such period may be extended the equal period for which the management may remain vested in the Central Government should it become necessary therefrom the date of ending.

4. From the facts set out before the High Court, it appears that the management of the undertaking had been taken over earlier provided that the expenditure had not paid to full the price of the sugarcane purchased before November 15, 1978 and that included the sugarcane purchased during the sugar year 1974-75 and the amount due was more than sugar cane of the total price of the cane purchased during the sugar year 1973-74. It was suggested by the respondent that the amount of cane price for the sugar year 1977-78 could not be a ground for making the sugarcane order. It was urged that cl. 1(a) of subpara. (2) of para. 3 of the Ordinance, on a proper construction should, empower the Central Government to make an order for restoring the management of the undertaking only if the amount of cane price was due for sugarcane purchased during the period from the commencement of the sugar year 1978-79 to November 15, 1978 which period would fall within the sugar year 1978-79. The respondent failed to persuade the High Court, and a ground relating the cane price.

5. It is apparent from an analysis of the provisions of the Ordinance and thereafter the Act which replaced it, that the principal purpose of the legislation was to manage sugar undertakings into proper functioning order by empowering the Central Government to restore the temporary management of the undertakings. The legislation makes two kinds of cases involving such management. One is the failure of the undertaking to commence the manufacture of sugar cane before the appointed day in the sugar year or where the sugar undertaking having started the manufacture of sugar cane or

before that day, has started its manufacture sugar before the expiry of the average period of manufacture of sugar. The cl. 1(a) of subpara. 10 of S. 3. The other is the case where the sugar undertaking has accumulated arrears of cane dues up to a date in a sugar year to the extent of more than ten per cent of the total price of the cane purchased during the immediately preceding sugar year. Suba. 1(a) of suba. 10-a of S. 3. The cane cane cane provide evidence from which a principle can be drawn that the sugar undertaking is a business. In both cases that statute further requires that the Central Government should be satisfied that the efficient functioning of the undertaking is necessary for the purpose of the Act then it is to say for maintaining the continuity of the production of sugar for meeting water building to other producing farmers and for their sustaining the welfare of all sections of the people. Suba. 1(a) of suba. 10-a of S. 3 in other words what the legislation intends is that where a sugar undertaking has been so mismanaged that either the undertaking has failed to commence the manufacture of sugar in the sugar year or having commenced manufacture has ceased to carry it on during the sugar year or has accumulated arrears of cane dues to extent of the prescribed standard, then in all these cases it must further be determined whether the efficient functioning of the undertaking is necessary for the purpose mentioned earlier and only when being so satisfied can the Central Government restore the temporary management of the undertaking. It takes over the undertaking temporarily in order to put a back order into the running of the enterprise and shortcoming responsible for the mismanagement and restoring the undertaking to a normal condition of proper functioning. The same standard under the legislation is intended to serve more than the object of recovering the arrears of cane dues. It is the object of recovering arrears of cane dues also was the purpose to be achieved, there was already sufficient provision in existing statute such as the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1967 which by S. 17 thereof provides for the recovery of arrears of cane dues. The sugarcane Ordinance and Act cannot be considered as per well statute providing remedy for the recovery of

fact. An item must represent another, the object of the transaction creating a new range of purpose.

5. The question of the expenditure/expense has, High Court was, that the permissible limit of amount of cost does not have to meet as per cost of the most price of the same purchased during the immediately preceding sugar year and that a reduced expense should be used to compare the amount of cost done in the same purchased between the commencement of the instant sugar year and the date in the sugar year when expenditure of the matter was made. We are not satisfied that of the value set at \$ 3 should be allowed. The permissible limit must continuously standard for determining whether the amount of cost does fall within the permissible limit or have exceeded it. It does nothing more than that. It cannot be regarded as a criterion for determining whether the amount of cost should not be confined to the sugar purchased during the instant sugar year or can include also the amount in relation to sugar purchased during an earlier sugar year. The language of the clause is clear. It speaks of amount of cost done within the same purchased before that date. It seems to us that the language is not enough to include all the amount of cost done accumulated up to that date, including the amount pertaining to sugar year purchased in earlier years.

6. In its result, the appeal is allowed, the judgment and order is set aside and the case is remitted to the High Court for rehearing and the same decision is directed. As the power in case of first instance, check and order was made.

Appeal allowed.

1984 ALL. L. J. 217

= AIR 1984 Supreme Court 463

FROM AIR 1973 ALL J. 215

**E. S. YOUNG & LAMBDAH AND  
R. H. MOSEY**

Civil Appeals Nos. 164 and 166 of 1972 (Dr.  
Prasanna Kumar)

**Srinivas Chinnappa v. Indian Tea Co. Board of Revenue, L. P. Respondent**

And

**Collector, Sugar Mills Ltd. Appellant v.  
Board of Revenue, L. P. Respondent**

**Stamp and C of 1990, S. 24, Feb. 18, Apr. 22  
— Stamp duty — G. Company selling lands  
and buildings to S. Company subject to  
equitable mortgage created by G. Company  
for clearing deferred payment guarantee from  
Bank — Amount of such mortgage liability  
under equitable mortgage would also be  
chargeable for stamp duty.**

The object of S. 24 is very clear. That section means that when a purchaser purchases a property for a certain amount subject to the payment of a certain debt, amount or obligation, he is actually purchasing the property for the real interest plus the amount of the debt and the aggregate of the two amounts ought to be treated as the true amount for which the property is bought. Otherwise there should be a difference between the true consideration and the consideration which is made liable to stamp duty. (Para 18.)

In the instant case G. Company sold certain lands and buildings and machinery to S. Company for a consideration of Rs. 26.54 lacs. The sale deed recited that out of the above total sum Rs. 25 lakh was represented the price payable for the machinery, vehicles, stores, finished goods etc. being all movable contents, the sale and transfer of which had been completed by the parties by the document of mutual delivery, and the balance of Rs. 1.54 lacs represented the price payable in respect of the lands and buildings of the sugar factory and the said document was being submitted for the purpose of executing sale in respect of the lands and buildings free of all

LC 82/0718, 83/0747





Documents and signed valuations were passed to the Board of Directors of Guadalupe Sugar Mills and the Board of Directors of Sonoma Caneeras on 17th September 1966 offering facilities at present under the documents dated May 20 1966 subject to the equitable mortgage in favour of the Puerto Nacional Bank Ltd up to the limit of Rs 40,00,000. The valuations passed to the Board of Directors of Sonoma Caneeras on the 17th September 1966 referred to above concerning the execution of a legal mortgage in, and amongst Captain Juan Soto Milla, Sonoma Caneeras and the Puerto Nacional Bank Ltd regarding the debentured guarantee payments owed in favour of Mrs. Saperstone. They so having been given at the instance and on behalf of Sonoma Caneeras confirming the equitable mortgage and transferring the facilities thereunder as mentioned in the debt mortgage agreement which had been placed before the Board for its consideration. Sonoma Caneeras also issued a deed of assignment on October 28 1966 stating that it had purchased the properties and under the documents dated May 20 1966 subject to the equitable mortgage executed by Guadalupe Sugar Mills in favour of the Puerto Nacional Bank Ltd. All the three documents signed, the sale deed dated May 20 1966 set in two deeds of declaration received by Guadalupe Sugar Mills and by Sonoma Caneeras respectively, acknowledging that the sale was subject to the equitable mortgage was presented before the Sub Registrar. May 20 1966 document. The documents dated May 20 1966 had been written on a stamp paper of Rs. 7-0-000, stating that the consideration for the sale deed was Rs 7-75-000. The Sub Registrar one of the cave that the properties had been sold subject to two liabilities one for Rs 1-20-000 and another for 45-00-000/1000-000, so that the total consideration payable for the sale was in the order of Rs 1-27-4-000 and there was deficiency of stamp duty of Rs 5-12-000. He was also of the view that each of the two supplementary deeds of declaration which had been issued on stamp papers of Rs. 1-00-000 had been issued on stamp papers of Rs. 4-25 and one paper stamp which had been cancelled.

The Sub Registrar accordingly, requested the sale deed and the deeds of

declaration and forwarded them to the Collector for retention under the Act referred to the matter to the Chief Controlling Revenue Authority, the Board of Revenue. Their President the Chief Controlling Revenue Authority the Board of Revenue themselves referred the case to the High Court of Jharkhand

4. The reference was first heard by the High Court on March 1970. By its order dated March 27 1970 the High Court referred the case back to the Chief Controlling Revenue Authority. Their President however it is to be noted a brief statement of the case incorporating certain additions and alterations referred to in documents along with some other documents. Accordingly a brief statement of the case was submitted to the High Court. In the reference the following material facts were referred to the High Court for its opinion:

1. Whether it was of the above opinion of the Board, the principal sale deed dated 20-5-1966 is a conveyance in favour of the lands and buildings and the mortgages created on the basis of consideration of Rs. 28-64-575/10 in the light of 3. And the Stamp Act and stamp duty with a duty of Rs 1-27-400/10 under Art 22 Schedule 14 of the L. P. Stamp (amendment) Act 1962 is against the 21-000/10 paid?

or

2. Whether the sale deed showed a conveyance with, of lands and buildings in consideration of Rs. 7-75-000/10 plus Rs. 1-20-00-000/1000 total Rs. 1-27-5-000/10 in the light of 3. And the Stamp Act and stamp duty with a duty of Rs 1-27-400/10 under Art 22 Schedule 14 of the L. P. Stamp (amendment) Act 1962 is against the 21-000/10 paid?

or

3. Whether the sale deed showed payment of the value declared of Rs. 24 of the Stamp Act and is a conveyance of the lands and buildings along with mortgages being in the light of consideration of Rs. 28-64-575/10 and is stamp duty with a duty of Rs. 1-27-400/10 under Art 22 allowed as against Rs. 21-000/10 paid?

or

4. Whether the sale deed showed document but without the stamp of Rs. 24 of the Stamp Act and is a conveyance of lands and buildings only in consideration of Rs. 7-75-000/10 and is stamp duty with a duty of Rs. 21-000/10 under Art 22 allowed?

or

5. If the sale deed shows it does not fall under any of the above circumstances above what should be done to be a conveyance for payment of stamp duty under Art 22 allowed and with S. 4 and S. 24 of the Stamp Act?

or

6. Whether the other two documents are supplementary deeds with a meaning of S. 4 of

The Group A1 and A2 were given a pre-test and then, at the 4th and 6th sessions, the 3-AD test on each case.

3. The last issue of the above-mentioned opinion of the High Court furnished two questions for its consideration for settling the questions referred to it: (1) what was the average duration of the term for which the mortgage of the mortgaged dated May 20, 1944, and its continuance the other two mortgages were subsequently made, within the meaning of s. 4 of the Transfer of Property Act, and (2) what was the date of the mortgage of Rs. 4 lakhs against the National Bank? The High Court by its judgments dated December 12, 1951, decided under the latter point that the two deeds of declaration were inadmissible to the suit period dated May 20, 1944, and all the debts due to the plaintiff on account of the series of sale deeds between the parties is held that the mortgage of the mortgaged was that the mortgagable property was being constituted subject to the equitable mortgage created in favour of the Punjab National Bank Ltd. for Rs. 50,00,000. Accordingly, it held that under s. 4 of the Act the date of Rs. 4 lakhs was payable as against Rs. 5 lakhs on the two declarations. The High Court also held that the continuance of Rs. 1,20,00,000 in the consideration for the suit was incorrect because the property sold was not subject to the payment of that sum. There was a lease history given by the Punjab National Bank to National Congress and the property given as security under was the mortgage of National Congress and was the property, which was being sold. The sale was not subject to that debt. This need not depend on, longer than the continuance of this part of the debt is not questioned by any party, indeed as similarly the continuance of Rs. 25,00,000, which was the price of the machinery etc. was also held by the High Court to be not part of the mortgage in this case, did not constitute the subject matter of sale. They had already been sold by several delivery. This part of the Court is not in question before us. The High Court further held that the sum of Rs. 10 lakhs for which the equitable mortgage had been created on the property constituted under the sale, was not the amount as part of the consideration for the conversion in question under s. 54 of the Act. It accordingly held that the value on which stamp duty was payable under the Act as per Art. 23 in Schedule I in respect was Rs. 7,75,000. Having this note of the "10 lakhs" mentioned in the document, the Court in having the conversion history under the equitable mortgage and directed that some more stamp duty should be collected.

Rs. 775,000 on the case of the domestic coal, Rs. 20,700 and Rs. 470 on export. It left no doubt of the vast differential approved by the members of B. for taking in the sale for purposes of raising funds. Godavarigudi, "Wells and Minerals. Argument from that there is no remedy."

4. The purpose of law which treats the corporations as the same as § 1404(b)(1) is to make them

20. **Other** any property is transferred to any person in consideration, whether or not of any debt due to him or subject to his demand, or contingent, as the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance upon the property, or not, such debt, money or stock, is to be deemed the whole or part, as the case may be, of the consideration required and not the money or chargeable with all national debt.

Provided that nothing in this section shall apply, to any such merchandise sold as to merchandise in Article No. 10 of Schedule I

**Explanation.**—In the case of a sale of property subject to a mortgage or other incumbrance, the unpaid mortgage money or interest, charged together with the interest of any debt on the same, shall be deemed to be part of the consideration for the sale.

Provided that where property subject to a mortgage is transferred by the mortgagee, he shall be deemed to have assumed the debt payable under the transfer for the purpose of any claim against him in respect of the mortgage.

100

iii) A case in Ex. 1-100. A utility property in B has a transmission line in Ex. 100 that the release of the present debt of Ex. 1-100. Being done, it results in Ex. 1-100.

Check with a property in B for the 2000 which is subject to a mortgage of C for the 1000 and unpaid interest for 2000 Stamp-duty is payable on the 1000.

(c) A corporation is liable for the value of the net EBITDA for the S-Corporation less the losses from A. Shareholder is payable for the \$1000 less the amount of Shareholder already paid for the mortgage.

7. The meaning of § 24 is clear as the above property is conveyed to a person the consideration wholly or in part of any debt due to him subject either contractually or contingently to the payment or transfer of any money or stock, whether or not the deed or the property then the debt or money or stock is to be discharged or satisfied or not on the same day. It is







ask the applicant who was liable to pay stamp duty objected that the application for payment could not be determined at the date when the guarantee was executed for stamping being in the absence for reasons of convenience of a liability assessment notice. The agreement was approved on the basis of principle that such words as, namely, payable, which used in the English Stamp Act 1891 denoted money payable either on a contingency or as a contingency. Lord Macmillan took notice Lord Tucker and Lord Morris agreed declared that

I take it therefore to be a well-understood principle that the money payable is ascertained for the purpose of stamp without regard to the fact that the agreement in question may itself contain provisions which will in certain circumstances prevent the money payable in full. It does not, then, as at least no former means for adopting a different principle where there are legal clauses which merely may be construed in the past according to specified contingencies. Nor does it matter for this purpose whether the effect of such a clause is to make it possible for the sum to be ascertained or not to be ascertained. In *County of Durham Educational Finance Committee v. Island Revenue Council* (1949) 2 K.B. 604 my colleagues would have been disappointed to see *Underwood Finance Ltd. v. Co. Ltd.* (1948) A.C. 2, (in which the first case) the decision might have been reversed or distinguished. What is necessary is that it should be possible to ascertain from the agreement that there is some specified sum agreed to be the subject of payment whether by instalment or by a lump sum or by instalment. Even then, however, evidence may have to be produced in relation to certain facts of importance such for example as guarantee in which the interest charge is calculated according to the variation sum contingently payable or in part or in another way, the amount of the guarantee (see *Underwood Finance Ltd. v. Co. Ltd.* (1948) 1 D.O.J. 141; *Island Revenue Council* (1949) 1 K.B. 604).

**14.** In *County City Council v. Island Revenue Council*, (1949) 1 All E.R. 1807 the Chancery Division has followed the above principle after reviewing all the cases referred to therein.

**15.** It was however argued by the learned counsel for the appellants that the liability of the defendant for the stamp duty was dependent upon what was written in it and the Court should not look at anything else to decide the substance made under S. 37 of the Act. It is not necessary to consider the substance of the proposition in this case, as it is the duty of the appellants themselves that what was a valid flow from an agreement originally was created and is subject to the applicable mortgage from the very beginning when the deed of declaration was written. Had the document of May 30, 1948 been the only document then questions would have arisen whether (the record) shows that the consideration for the property which was considered sufficient by the Bank to secure £2,41,00,000 would truly be £2,17,00,000 and whether the said sum would be a loan on the mortgage law or not. The aim of the deed to decide the and questions as to the date of the declaration which would be the subject of the mortgage, the mortgage law and other facts as a future case could be £2,41,00,000. If the said had been the mortgage then any such contingency from liability would have fallen on the vendor Godwin Sugar Mills. But the point is the said was adequate provisions to prevent any such liability being done against the Godwin Sugar Mills by making it very clear that the said liability to the Bank would be on the property sold to the benefit of the guarantors. Serrano's Guaranty and by stating that under the impugned agreement which was to be executed the Bank would treat Serrano's Guaranty as the Company responsible for that debt in the place of Godwin Sugar Mills. The Bank had not written to the Godwin Sugar Mills on April 29, 1948 that on November 5, 1948 the name of Serrano's Guaranty had been substituted for the name of the Godwin Sugar Mills in the Deed of Payment Guarantee to the extent that the said guarantee be treated as having been made by or for and on behalf of the said Mills. Serrano's Guaranty (Interim Act).

**16.** The object of S. 34 of the Act is very clear. This section means that where a provision guarantees a property for a certain limited subject to the payment of specified debt actual or contingent, as is virtually

perfecting the property for the real amount plus the amount of the debt and the aggregate of the two amounts ought to be treated as the true amount for which the property is being sold. Otherwise there is bound to be a difference between the true consideration and the consideration which is made liable to stamp duty. To determine what the proper true cost is. The properties which had been purchased in reliance on security by the Bank for the liability of Rs 45,00,000<sup>1</sup> must be conclusively shown more valuable than Rs. 45,00,000<sup>2</sup> when the date of completion of mortgage would have become payable only on Rs. 7,76,000<sup>3</sup>. But for the above rule in S. 24 of the Act, the true cost the amount of Rs. 7,76,000<sup>4</sup> must have been paid by the parties taking into consideration the liability on the Bank under the mortgage which ought to be paid.

17. The two decisions in which interest was allowed by the appellants are of no assistance to them. The first one was *Salimullah Siddiqui v. Board of Revenue*, AIR 1959 All 1011. In this case the High Court of Allahabad held that when an immovable property which was encumbered by a charge or mortgage was sold but not subject to the encumbrance, then the amount of money concerning the charge or mortgage need not be added to the consideration mentioned in the receipt as the value of the property sold. The next decision is the decision of this Court which was rendered on appeal against the above decision of the Allahabad High Court. The majority decision of the learned Chief Justice, Edwarth Alimulla, (1964) 2 SCR 349 (AIR 1964 SC 1013). This Court

affirmed the decision of the Allahabad High Court and dismissed the appeal of the Revenue. In the transactions involved in these two decisions the sale was free from all its encumbrances or any mortgage. In such case itself there was no mortgage money which had to be repaid by the appellant. S. 24 of the Act could not be relied on by the Revenue to insist upon payment of stamp duty at such stated mortgage money. But the fact of the case before us is different. Here the sale was in fact subject to the equitable mortgage in favour of the Bank. Hence their decision can of no avail to the appellants.

18. We are of the view that the High Court in its well-considered judgment has rightly taken the view that the amount of Rs. 45,00,000<sup>5</sup> should also be deemed as part of the consideration for the sale and that stamp duty was payable on Rs. 72,76,000<sup>6</sup> under S. 24 of the Act.

19. The appeals therefore failed and they are dismissed with costs.

Appeals allowed.

#### 1986 ALL LJ 126

K. S. SINGHANIA, DEPUTY CH. J.

*Magnum Insurance Co. v. District Magistrate, Varanasi* and another Respondent.

*Habib Cigar Co. No. 2754 of 1980 (Dr. 124/1980)*

National Security Act 1980, S. 3(1) — Detention order — Consideration of evidence given by decessit in FIR — Non-consideration by magistrate — Order of detention is valid.

Facts of the Case: *Magnum* is consider the country status of the decessit given by decessit in FIR, which formed the ground of detention whereas the magistrate of the Magistrate in regard the involvement of decessit in the incident and consequently the order of detention. 1985 All LJ 1103 (PB) Ratilal.

*Case Related Chronological Facts* 1985 All LJ 1103 (PB) 6

Facts for Reference: By Case Adjutant for Respondent.

K. S. SINGHANIA, J. — By means of this person under Art 22 of the Constitution the petitioner has challenged validity of his continued detention in pursuance of the order of the District Magistrate, Varanasi dated Feb. 16, 1980 issued in exercise of power under S. 3(1) of the National Security Act 1980.

2. The District Magistrate has passed the order of detention against the petitioner on

SC/AMB-C/33/86/1006/1980

[illegible]

3. The petitioner has incurred due and reasonable charges for his transportation along with his four friends on a railway coach to Lakshmi Station for arrested near Kanchanpally, Chennai. After Singh accompanied by Minerva Lal Nairani and Rama Shankar and others attacked him with chains, iron rods and bombs, causing serious injuries to him and a few passersby. On receiving the report the petitioner rushed to Kanchanpally Hospital where he was given medicine and the petitioner has further incurred due medical charges for his various injuries through his mother. As the police turned blind as to the whereabouts of the petitioner, he was arrested at Madurai and his mother's complaint was registered against Aftab Singh and others. A hearing was held on 19.11.1962 under S. 207 (4) IPC in police station hospital at 2.30 p.m. The charges were registered in the Medical Officer of Kanchanpally Hospital (12 p.m. admission). Since multiple injuries appear on the petitioner's body. The petitioner has further incurred that Aftab Singh and others had used and carried his father by South State and a first information report on police station and on 8.12.62 at 14.15 hours under S. 157(1) & 158, against the petitioner and

claim on the allegation that the prisoners also, with two other inmates, A. L. Kline and William Lee Smith, had conspired with Singh and the attorney to kidnap and murder the president of the American Legion. The first Singh and others occupied some premises were seized. On the basis of the first information report, dated May 1946, Singh was requested at the police station (Singapore). On the basis of the allegations, contained in the first information report lodged by Smith Singh and Singh, India, against the post office and the attorney the District Magistrate, posted the case, and took up the case.

4. The petitioner's contention is that the system of the machine was not played by him. Dattatraya Magdumkar has been committed to the jail before arriving at the request for remission as contemplated by s. 202 of the Act. In paragraph 18 and 19 of the petition, the petitioner stated that this is a statement supported by the petitioner's father and that the petitioner's injury report was not placed before the District Magistrate. In R. S. Datta Datta Magdumkar, who passed the order of remission has filed his own affidavit. In paragraph 11 of his affidavit he has stated that he has committed to state that in a report of which had been presented to the district. There is no document or even suggestion in the affidavit of the District Magistrate, that a new copy of the order of remission is contained in the petitioner's information report was placed before him for the policy or that he had considered the same before arriving at the request for remission that the person is a dangerous man necessary to prevent him from indulging into activities prejudicial to the public order. On the material on record it is a well known fact that the first information report relating to crime no. 11, first lodged in favour of the petitioner and the various statements were inscribed before the District Magistrate, neither submitted the same.

3. The question which left no controversy as to what is the effect of the failure of the Finance Management to produce the version of the meeting given by the petitioner as the true version on matters in the two subsequent reports (subject to finding of the primary concerned version of the meeting according to which the petitioner was the victim of the attack made by A. ...

[illegible]

4. In *Wilbert Cooper* petition No. 10294 of 1964 reported in 1970 AIL LJ 12323 (*Wilbert Cooper v. People's Central Life Insurance Co.*), Full Bench of the Court held that if the version of the person proposed to be declared was already there in all known documents, the insurance company must consider the Company's claim along with that of the public (policy) holders instead of its mind whether or not it should act upon the report of the police. The Full Bench further held that since the District Magistrate had declined to consider the complaint given by the insurance company to the accident which formed the material foundation of the order of declaration, a writ issued. Applying the principle laid down by the Full Bench there appears to be no doubt that in this case, District Magistrate had acted on the written version of the accident report by the insurance or the first information report. It would thus be said that he had acted upon the police report in passing the order of declaration. The members of the District Magistrate was likely to be affected by the report of the insurance or the first information report. Therefore the members of the District Magistrate who signed the order of declaration or the persons or officials and thought and actions concerned in the process of declaration were concerned.

<sup>17</sup> In the event, persons associated in partnership, *ibid.* The respondent still is

100% of library respondents indicated support for the efforts of the local health department.

[illegible]

## Model-Like Algorithms = The Same Relevance

Contract Report No. 172-01-0000-01-0000  
1. Initial:

Weekend: Aug 11 at HPTA, 9:30 - (Long  
Influences - Video)

The documents which are desired should be submitted in duplicate. Documents should be of an official nature, as to major full confidence, or full faith in their contents. In other words, they should not be any document as they should show their date upon the validity of any act. Further, such documents should be accompanied from other documents and the evidence on record. (Page 10)

**F. V. Moore** *for Appellate Review*, *State*  
*Admission for Reconsideration*

[ P. SINGH, ] = Kashi Triak Carvee  
 appellation has preferred the appell against the  
 judgements and centre of Sri D. P. Shukla  
 addressed Sessions Judge Bhatia dated 10  
 1987 came among the appellation under sections  
 192 and 201 I. P. C. and appearing him to  
 representation for life and seven years the  
 Sessions Judge by make correct comments  
 whether the sentence of a with it, it would be  
 ample or excessive. Both the sessions, were  
 ordered to set aside comments.

**I**n The prosecution case is that Mohammed Bari also had knowledge of the demand, was a knowing participant along the police beat and carried a case under section 118 Cr.P.C. on the basis of the police report dated 12.10.1975. He was said to be forcibly obtaining money from the bus stop keepers. Mohammed Bari also had knowledge of the local shop keepers, running a legitimate shop such as Match & Soap appliances and other items, etc. etc. etc.

\*Approved under the U.S. Privacy Policy, 11/1/2015

3. The prosecution further testified as to the fight between Dada and Saba June 1973. She testified that her wife, Sam, Mahdavian (P W 1) was sleeping on separate side of top of their duplex building. Although Dada on the apartment accompanied by her sister accused both of whom Dada had died before this trial while the testimony above was regarding the learned Sociomedical expert that she and three colleagues and on both the deceased and her wife. According to the prosecution, an elevator built into the elevator shaft runs up close to the steps of the deceased's house, and when both the victims were awakened as a result of the earthquake and thrown on stairs, they were able to see the 1st or second floor running away. Since they were conscious then, they were responsible for them.

4. The first information report of the accident lodged by the deceased himself in Police Station Agents within duplex building was 2:00 a.m. Both the report were initially reported by Dr. P. N. Singh, M.D. Detroit Hospital, Bunka, on 24-6-73 between 4:30 a.m. and 4:40 a.m. According to their report, reports both of them had received extensive bruise of various degree on various parts of their bodies. Since the nature of their eyes would be witness for the purpose of the report, an initial multi-personal examination. Then, Mohammed Khan, alias Dada, completely pleaded that on second degree trauma on the entire face to such to that the eye ball had burst and the eye balls were shattered. There was photographic pictures so much so that the person did not permit the doctor to have full examination of the eyes. However, the eyes of Sam Mahdavian had stopped vision. It may also be noted that Mohammed Khan alias Dada had subsequently died at the end of eyes and his post-mortem examination report given by Dr. Vazir Memon, Medical Officer, Sher-e-Lah Medical Hospital, Islamabad dated 10-7-1973 confirms that the eyes of the deceased were burst apart from the various other parts of body. The cause of death was reported to be shock on account of the said trauma.

5. The appellates had claimed having committed the crime and alleged that by him,

later, implicated in the case on account of seeing. The defense did not state had any evidence in defense.

6. The prosecution presented a full bag witnesses including Sam Mahdavian (P W 1) and Lameel (P W 2) who was reported in the first information report to have watched the spot and witnessed the occurrence. Sam Mahdavian (P W 1) was declared hostile by the prosecution and was subjected to cross examination by the prosecution. May be said, the evidence on record, the learned Sessions Judge permitted and sentenced the appellates as above while acquitted the others. All the accused including the appellates standing clear and before the learned Sessions Judge were however acquitted of the charge under section 147 I, P.C.

7. The first information report was lodged by Mohammed Khan alias Dada (deceased himself) to the police station where it is the first accused stated others had thrown and on him and his wife. He claimed that he was awakened by throwing of soil on him and then he saw in the light of the electric pole nearby that the four accused were running away and he recognized them. However, from the medical evidence on record already discussed above, it appears to us that perhaps he was not was possible to open his eyes after the said had fallen on them. We have our doubts as to whether he was in body running away. The learned Deputy Government and courts has, however, relied upon the statement of the deceased which was recorded by the investigating Officer under section 161 Cr. P.C. in which he stated that all the four accused had come to the spot near they were and a run by the sound (noise) of their running that they had awakened. He then added that another Sister-in-law and her sister, which they were carrying on gliders. He claimed that he and his wife had recognized the four appellates on the light of the bulb from the electric pole nearby. It is argued by the learned Deputy Government Advocate that this statement as well as the first information report should be taken to be the dying declaration and were

they implicate the appellant as these statements should be sufficient to confirm his confession and sentence.

The learned counsel for the appellant has pointed out that the fact statements about the incident were stated in such a manner that should be of such a nature as to suggest the confidence of the Court in their correctness. In other words, his argument is that there should not be any discrepancy in them which should throw doubt upon the veracity of their contents. It is also argued that such statements also used to be incorporated from other circumstances and the evidence on record. He agrees with the appellant and try to appreciate the facts in that light.

We have discussed above that there was perhaps an opportunity for the deceased complainant to see or recognize the appellant and his companions immediately as it was not possible for him to open his eyes after being struck with steel blades at the time statements report he was beaten and was shown on them when he and his wife were sleeping and it was only after awakening and that they were released. However, when charges under section 141 Cr. P.C. be has taken a contrary stand by stating that both he and his wife were awakened by the sound (shout) of the approach of murderers and it was then that they had recognized them as much so that the case was carried on given by Shaker and Hakeem Ullah appellants only and it was shown by them. Upon the two versions materially differ we do not find circumstances possible to place sufficient reliance thereon. Besides the fact remains, as the circumstances of the case would be for into the Mahipat Singh P. A. is the it has standing, stated they were under a light in all and it was probable. This was a very damaging statement to the prosecution case. So she was asked Hakeem and was permitted by the Court to be cross-examined by the State Counsel. She admitted that although the electric gate was closed only one or two people stay from the shop yet conducted in the cross-examination showed by the defence that the metal gate had no hole as it had been broken some time back. She at her cross-examination by the State Counsel stated that both she and her husband had not recognized any of the

murderers. She stated that her husband had become unconscious as much so that he could not see or recognize any of the murderers who had killed him on the spot. According to her he was given a person to speak and was taken to the Thana, which, consequently, Hakeem admitted might be brought out by the learned State Counsel at the cross-examination. And the statements drawn from the learned Sessions Judge that she was sleeping silently and remaining the way fully under the influence of the unusual perception her unusual looks of violent he said to be completely warranted by the circumstances of the evidence given by her. Although the presence of Mrs. Mahipat Singh on the spot near the incident as she had suffered and trauma on her body but from her statement as discussed above, no point can be limited on to the appellant.

4. Learned P. W. 12 also came named as the first information report. He/she has stated that he/she worked the appellant has stated as and did not see any of the murderers there. He/she stated the deceased had his wife lying down and both were. Of course, he has stated to under section 141 Cr. P.C. concerned the fact that Datta Mohapatra had told him soon after the occurrence that and was shown by Shaker, Hakeem Ullah, Kape Ram, Ramchandra and others, but no reliance can be placed on this statement inasmuch as we have discussed above that the deceased was not in a position to see or recognize the murderers and at that perspective, he could not have named these persons before Learned.

5. As a result of the above discussion we have no hesitation to conclude that the prosecution had insufficiently failed to prove the guilt of the appellant. His appeal must succeed.

6. The appeal is allowed. The conviction and sentence awarded by the learned Sessions Judge on him are set aside. He is acquitted of all the charges against him. He is set free. He must not be made subject to further search or surveillance. His services are discharged.

Appeal allowed.







### 3. If 1<sup>st</sup> of the Amending Act establishes . . .

any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of the Act shall, except so far as such amendment or provision is inconsistent with the provisions of the principal Act established by the Act, stand repealed.

2. The above provision extends to subject to which Part 5, 11 of the Amending Act which provides that notwithstanding that the provisions of the Amending Act have come into force in the capital under subject 11 of 5-17 of the Amending Act has taken effect and without prejudice to the generality of the provisions of 5-11 of the General Clauses Act, 1897, the provisions in relation to the right of that sub-section would prevent. Section 11 of 5-17 of the Amending Act provides that any as otherwise provided in section 11 of the provisions of the principal Act as amended by the Amending Act, shall apply to any law, pending, or pending application pending at the commencement of the Amending Act or amendment of that statute commencing notwithstanding the fact that the right or cause of action in pursuance of which such law, proceeding, application or petition is commenced or filed, had been acquired or had arisen before such commencement.

3. The principal Act referred to in 5-17 of the Code. By the Amending Act several amendments were carried out in the Code on the basis of the recommendations of the Indian Law Commission which had completed extensively the provisions of the Code before it submitted its 14th Report in 1973. At the time the Law Commission took up for consideration the revision of the Code, there were a number of different parts of legislative enactments in the Code which had been effected by the State Legislatures or by the High Courts. The subject of such legislation being in 1973 of Law 41 of the Seventh Sch. to the Constitution, it appears as a Law Legislature to amend the Code whether or not State is concerned in the same way or which a part, make a law which is in the Constitution Law 5-132 of the Code empowers the High Courts to legislate regarding the provisions of subordinate subjects their representative as well as regarding their own procedure. Their rules or regulations may be inconsistent

with the body of the Code. But it was proposed to add to this in the First Sch. to the Code 5-132 of the Code which is overlapping on 5-132 of the Code in some parts. Consideration in the Chartered High Courts to make reference to their internal civil procedure. As mentioned earlier before the Amending Act came into force on Feb. 1, 1977 many of the provisions of the Code and the First Sch. had been amended by the State Legislatures or the High Courts in the past. May be and such amended provisions had been brought into force in the areas under which they had proceeded. When the Amending Act was enacted making several changes in the Code Parliament also inserted 5-17 providing its repeal and savings and the effect of the changes on pending proceedings.

4. There are some sub-sections in 5-17 of the Amending Act. A reading of 5-17 of the Amending Act shows that it deals with the effect of the Amending Act on the Code. Code both the main part of the Code embracing all sections and the First Sch. to the Code which contains Orders and Rules. 5-17 of the Amending Act when read with the several local amendments made by the State Legislatures and the High Courts before the commencement of the Amending Act and shows that any such amendment shall stand repealed as such amendment or provision is inconsistent with the provisions of the Code as amended by the Amending Act stand repealed. It means that any local amendment of the Code which is inconsistent with the Code as amended by the Amending Act would cease to be operative on the commencement of the Amending Act on Feb. 1, 1977. The repealing provision in 5-17 is not confined to its operation to provisions of the Code including the Orders and Rules in the First Sch. which are actually amended by the Amending Act. The object of 5-17 of the Amending Act appears to be that on and after Feb. 1, 1977 throughout India wherever the Code was in force, there should be no procedural law, in operation existing and courts subject of course to any future local amendments that may be made under the State Legislatures or by the High Courts in the past may be, as inconsistent with the Code with amendments in the Code as amended by the Amending Act since should govern the procedure in civil courts which is governed by the Code. They are emphatic

the estate of the decedent of the Affidavit of Creditors was undisputed before it.

5. The appeal by special leave is filed against the judgment of Appeal 9 (1986) Civil (1st) (1986) No. 2794 of 1986 on the file of the High Court of Alabanda.

6. Josefa Christine respondent (Dra) claimed a decree for recovery of money on July 26, 1977 against the applicant (Garcia-Garcia) (San Fco. 1976) (1976) No. 1116 of the Madrid Civil Judge. In exercise of the said decree the immovable property belonging to the applicant was brought to sale by auction on Aug. 4, 1978 and the said sale respondent 3 was declared as the successful bidder. Before the sale was confirmed on Aug. 13, 1978 the applicant lodged an application for setting aside the sale under R. 90 of O. 21 of the Code on several grounds. Later on the Madrid appellant stated that the sale was held in the presence of the respondent 3 who was the decree holder had not obtained the permission of the executing court under R. 74 of O. 21 of the Code. The delay in filing that application was considered. The executing court upheld the plea of the applicant and the applicant then, relying upon such rule 74 of O. 21 of the Code and the said sale by its writ dated Feb. 28, 1979 was accordingly no such permission had been obtained by the decree holder. The application under R. 90 of O. 21 of the Code was dismissed as not received. Another plea made under R. 90 of O. 21 of the Code was rejected on the ground that a final income statement approved by the decedent of the deceased court respondent 3 had been presented before the District Judge. Relying under the provisions of S. 112 of the Code as amended by S. 7 of the Civil P.C. (Civil Procedure) (1976) (1976) No. 1116 of 1976 from Aug. 1, 1976. The District Judge dismissed the writ petition on Oct. 13, 1981. Against the decision of the District Judge respondent 3 made a petition under Art. 170 of the Constitution before the High Court of Alabanda. This petition was allowed by the High Court hold up thereby the confirmation to R. 74 of O. 21 of the Code as a matter of law in the State of Union. Finally before the Appellate Act came into force. It may be stated here that before the executing court and

the District Judge had upheld the contention of the judgment debtor that on the commencement of the Appellate Act (1976) (1976) No. 1116 of the Madrid Civil Judge made to R. 74 of O. 21 of the Code prior to that date ceased to operate and the Code as amended by the Appellate Act regarding the same. The High Court however took the view that since the Appellate Act had not made amendments of any kind as to the R. 74 of O. 21 of the Code, the amendments made by the High Court of Alabanda to R. 74 of O. 21 of the Code prior to the commencement of the Appellate Act remained valid. The High Court held on any delay on the part of respondent 3 in making the application under R. 90 of O. 21 of the Code and that the applicant under R. 90 of O. 21 of the Code could still be considered by the executing court. In the appeal by special leave the order of the High Court was set aside.

7. For purposes of ready reference R. 74 of O. 21 of the Code and as it was the State of Union. Finally prior to the commencement of the Appellate Act is set out below.

O. 21 R. 74 as in the Code

12. Decree holder can be held for or buy property without permission - (1) No holder of a decree in execution of which property is sold shall without the express permission of the Court be allowed to purchase the property.

When decree holder purchases without permission - (2) Where a decree holder purchases without permission the purchase money and the amount due on the decree may, subject to the provisions of S. 74, be set off against one another and the Court set aside the decree shall cover up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree holder purchases by himself or through another person without such permission the Court may, at the instance of the judgment debtor or any other person whose interests are affected by the sale, in order to satisfy the rule, and the rules of such application and order and an affidavit of facts which may trigger a sale, in whole or in part accordingly.



provisions of the Code either by a State Legislature or by a High Court which were inconsistent with the Code as amended by the Amending Act stood repealed irrespective of the fact whether the corresponding provisions in the Code had been amended or mutated by the Amending Act and then was subject only to what was found in order (Clad S. 10 Sub-sec. (1) of S. 10 provides that save as otherwise provided in sub-sec. (2) the provisions of the Code as amended by the Amending Act shall apply to every suit, proceeding, appeal or application pending at the commencement of the Amending Act or subsisted or filed after such commencement notwithstanding the fact that the right or cause of action in pursuance of which such suit, proceeding, appeal or application commenced or filed had been acquired or had accrued before such commencement. Sub-sec. (2) of S. 10 reads now devoid of any, by making the Code as amended by the Amending Act applicable to all proceedings commenced or filed subject to sub-sec. (1) of S. 10.

11. The High Court, was therefore in error in holding that the amended S. 11 of C. 21 which was in force at the State of Uttar Pradesh prior to Feb. 7, 1977 continued to be in force after that date and that the court substituted in which the decree holder had purchased the property without the express permission of the executing court was unreasonable under sub-rule (2) of R. 13.

12. We do not in the circumstances of the case find any merit in the contention of the respondent that the proper rule under C. 21, R. 13(2) of the Code has failed to run personally because of the clerical error in typographical at the State of Uttar Pradesh being there. At this stage we find it proper to consider the plea of inoperative when the High Court and the subordinate Courts below have not found a proper plea to reject the application on that ground.

13. The order passed by the High Court is therefore, set aside and the order passed by the District Judge affirming the order of the executing court is restored.

14. The appeal is accordingly allowed. No costs.

15. We thank Mr. S. N. Rastogi, Senior

Advocate who assisted us in this case at our request as amicus curiae.

*Appeal allowed.*

1996-ALL. L. F. 275

IN AIR 1996 Supreme Court 276

From Allahabad

S. MUSTAZA FAZAL ALI AND  
A. YAKHANNALAH J.

Criminal Appeal No. 203 of 1971 for C-4  
1976

State of Uttar Pradesh, Appellant v. Laloo  
and others, Respondents.

1(a). Criminal P. C. (2) of 1974, S. 366 —  
Appeal to High Court against conviction —  
Sessions Court convicting accused under  
S. 302/31 of previous chapter and sentencing  
accused to death — Conviction set aside by  
High Court substituting FIR and evidence in  
favor of accused — Two views as to findings on  
record were not possible — Field reversal of  
judgment and acquittal of accused by High  
Court was illegal. Decisions of All. HC, Reversed. (Para 12)

1(b). Penal Code (45 of 1860), S. 302 —  
Murder, previous and read amended —  
Accused convicted under S. 302/31 and  
sentenced to death by trial Court — High  
Court on appeal setting aside conviction and  
acquiring accused — Supreme Court in special  
appeal affirming conviction — More  
evidence had taken place over a decade  
ago the Supreme Court sustained accused  
prison to undergo imprisonment for life.  
Decisions of All. HC, Reversed. (Para 12)

YAKHANNALAH, J. — This appeal by  
special leave is by the State of Uttar Pradesh  
against the acquittal of the respondents Laloo,  
Ganga Doyal Suman, Anandhan Chandra and  
Jagan Nath Gadhia by the High Court  
reversing the judgment of the trial Court which  
convicted them and sentenced them to death  
under S. 302, I.P.C. for the murder of one  
Bhola Subashwar Singh at about 8 p.m. on 24-6-  
1974.

3. The case of the prosecution has been  
summarised in the judgment of the Courts below.

2000-ALL-1-1000

Therefore, it is not necessary to set out in detail the facts of the case in this judgment. Laloo is to see that the prosecution case is that there was long-standing enmity between the respondents and the deceased Khitmur Singh who was a leading land owner and member of Mangalpur and the President of that village for May 25 years before he was murdered in about 8 p.m. on 24-5-1974 at the end of the rainy season about 15-20 days after the Mangalpur village when he was coming along the highway passing through the forest people in the company of Ram Lala P. W. 1, Jaihar Lal P. W. 2, Bhadrant P. W. 3 by the respondents accusing him with a suspected motive to avenge past and future long heavy losses and for displacing grain and cutting woods. There was ample moonlight during that night in being the day of Shukla Pak 4 and there were also torch light with P. Ws 1 and 3. P. Ws 1 and 3 being regularly in Mangalpur, Ram Lala and Bhadrant which is some about 1 mile west of Mangalpur. P. W. 1 is Jaihar Lal, President of the Cooperative Society of Mangalpur, himself being a member of the Gram Sabha of that village. The respondents Jagan Nath belongs to Gausapur which being a nearby village is included in Mangalpur Gram Sabha while the other three respondents belong to Mangalpur itself. The respondent Jagan Nath is also a member of the same Gram Sabha. There was obviously long-standing enmity between the respondents and the deceased Khitmur Singh right from 1959. This deceased had acted as the chairman of the Khetayat 142 HTI that the respondents and one Chandra Mohan were planning to kill him first to obstruct and impede entry and were collecting money for that purpose among themselves. The respondents had others had formed two committees for the removal of the deceased as President of Mangalpur. The first of those committees had been started by the Sub-Divisional Officer Ballia on 30-1-1974 while the second was a village committee before that Officer retired after his death. The deceased accompanied by P. Ws 1 and 3 was returning on 24-5-1974 from Ballia where he had gone in connection with the enquiry into the removal complaint which had been posted on that day. The facts relating to the enmity existing between the respondents and the deceased are mentioned in para 3 of the first Court judgment.

3. When the deceased was going a little ahead of P. Ws 1 and 3 at the eastern end of the Mangalpur, the respondents emerged from the money place armed Laloo with a revolver, So Kishor and Ganga Dyal with daggers and Jagan Nath with a whip. Laloo fired with his revolver and the deceased fell down after receiving many on the chest. Thereafter Laloo ordered the other respondents by coming the north of the deceased whereas the other respondents remained upon the deceased for covering his back. When P. Ws 1 to 3 showed in disapproval of what the respondents were doing, Laloo pointed his revolver towards them and threatened to kill them. They therefore got frightened and ran towards Gausapur and after referring Noddy and Shro that the respondents had attacked the deceased they rushed to Mangalpur where they met Jagan Behar P. W. 4 and other and informed them also about the attack on the deceased by the respondents. Subsequently all of them were by the scene of occurrence and found the deceased's headless body lying in a pool of blood.

4. The first informant report was sent to by Jaihar Lal P. W. 1 of Mangalpur with the particulars furnished by P. W. 1 at the spot in about 9 p.m. on 24-5-1974. It was handed over by P. W. 1 to District police station at 11.30 p.m. on 24-5-1974 to the Sub-Division of police P. Ws 1 & P. W. 3 left the police station along with P. W. 1 and others for the removal of the corpse at 1.30 a.m. on 25-5-1974 and he began his investigation at the spot at 4 a.m.

5a. The headless body was identified to be that of the deceased Khitmur Singh by P. Ws 1 & 3 and Bhadrant P. W. 2 at about 10 a.m. on 25-5-1974. The body was further identified to be that of the deceased Khitmur Singh with reference to the serial of the ID card of the issue of the identification card of the deceased. The deceased was identified to be that of the deceased in which he had written that he had given Rs. 100 to P. W. 1 for buying weapons and the importance of the deceased which and were compared with his undisputed thumb impression. As per on the body of the deceased Khitmur Singh the head 11 cent

wound tearing the neck completely. (2) multiple gunshot wounds on the upper part of the front chest and (3) stretched containers over the upper part of the top. The doctor opined that death was the immediate cause of the neck by a sharp-edged and heavy cutting weapon and that the injury to the neck was sufficient to the voluntary cause of death to cause death.

5. The trial, particularly concerning the respondents was on the evidence of P Ws 1 to 3 who were examined as eye witnesses and also on the evidence of P Ws 4 and 5. The learned Sessions Judge accepted their evidence and relied upon the first information report given by P W 1 and found that all the respondents committed the heinous murder of Subash Singh in course of the upward entry and he accordingly convicted and sentenced them to death under S. 302 read with S. 34 I.P.C. But on appeal the learned Judges of the High Court examined the prosecution of the first information report as reported by P W 1 and rejected the evidence of P Ws 1 to 3 about the occurrence and rejected the respondents although they found

The medical evidence leaves no room for doubt as to the factum of the occurrence and the prosecution case with regard to it is true and the weapon used in the attack also recovered from respondents from it. The place of occurrence near the museum and at the jungle of Shringar place in village Nangpur is also found to be the voluntary of blood from there.

6. The case of the prosecution is that the informant P W 1 got the first information report written by P W 15 at the spot at about 9 p.m. on 24.9.1974 and presented it to the police station at 11.30 p.m. on the same day to the two inspectors of police P W 13 and then P W 12 to file the police station after reporting the case to the scene of occurrence along with P W 1 and others at 1.30 a.m. on 25.9.1974 and began his prosecution at 4 a.m. The names of the respondents as the appellants of the deceased as well as the names of P Ws 1 to 5 has been given by eye witnesses are mentioned in the first information report and all the three witnesses had been examined by P W 15 on 25.9.1974 itself although no named member

P W 1 also belongs to Nangpur and P Ws 7 and 8 belong to Shringar and Nam Nagar respectively. The prosecution relied on the evidence of P W 1 who has stated that he was, at the respondents killing and taking under cover of the respondents about the scene of occurrence at about 10.15 P.M. found that at about 8.30 a.m. on that day he found that all the respondents whose names he has mentioned were living at Shringar Jang. On going there about P W 15 was and on the way he met P W 4 and others and he went along with them to the scene of occurrence and saw the heinous body of the deceased Subash Singh lying there. The evidence of P W 4 is that whether was staying at Shringar at about 9 p.m. on the day of occurrence he heard the alarm. Then apparently he was being killed. He took up his rifle and others and asked his companions to go forward and wherever of them were about 20 yards away from the location of the village P W 4 saw P W 1 and others coming and P W 1 told him that Lalit had shot the deceased Subash Singh with pistol that he Subash and Ganga Dyal armed with shot and began fight armed with their weapons were sitting on the chest of the deceased and Lalit had cut out the neck of Subash and thereby P W 1 is 300 yards away from the scene where Lalit aimed the pistol at them. Therefore P W 4 and others went to the scene of occurrence and found the heinous body of Subash Singh lying there and subsequently P W 1 got the report written by P W 15 and presented with it to the police station.

7. The learned Judges of the High Court rejected the first information report on two grounds, namely that it is quite long and contains all the details and that P W 1 is not the member of the concern. They rejected the evidence of P Ws 1 to 3 as unreliable but accepted the evidence of P W 15 on the basis of the first information report of the police station, in the presence of his own father and others to the deceased of P W 15. They accepted the respondents and are under the impression that the evidence awarded evidence by the trial Court.

8. Mr. Justice Basant Kumar Mehta for the appellants State of Uttar Pradesh took as through the evidence of P Ws 1 to 3 and

the other witnesses as also through the judgments of the courts below and submitted that the learned Judges of the High Court were not justified in holding that P.W. 1 was the author of the first information report and that it was written by P.W. 15 as the police station is the decision of P.W. 15. He also submitted that the learned Judges of the High Court were not justified in rejecting the evidence of other eye witnesses P.Ws. 1 and 2 and P.Ws. 3 and 4 and accepting the deposition. On the other hand Mr. R. K. Garg, learned counsel for the respondents submitted that the first information report is not the 'Brain-child' of P.W. 1 and that it had been prepared at 11 a.m. on 25-9-1974 as stated by P.W. 15. P.W. 15 had signed the report of occurrence and sent the report based on the findings made by the deceased Jadhav Singh. He submitted that the evidence of P.W. 1 that he had gone to Bada in connection with the enquiry into the complaint filed by the removal of the deceased Jadhav Singh from the office of Pradhan of Manpura village and that he was accompanying him from Bada and was present at the spot of the occurrence was not reliable and having regard to the fact that although it is stated in the first information report that P.W. 15 was in Bada along with the deceased Jadhav Singh he has submitted his evidence that he did not go with the deceased to Bada and that he came to Bada separately and reached the office of the Sub-Divisional Officer only at about 1.30 p.m. on 26-9-1974 and also that he came to the court at the trial stage relating to this case. He further submitted that the learned Judges of the High Court were justified in rejecting the evidence of the only P.W. 1 but that P.Ws. 2 and 3 satisfactorily establish a clear picture from the fact that the investigating officer had gone in search of circumstantial evidence by way of the three men from their respective villages mentioned above for identifying the location mark as that of the deceased Jadhav Singh and that he did not believe the testimony of P.Ws. 1 or 2 who are put forward as eye-witnesses in this case.

5. It only remains to be submitted that the investigating officer P.W. 15 had no faith or honest belief in the testimony of P.Ws. 1 or 2 regarding the identity of the location mark as that of the deceased Jadhav Singh merely

because he had looked up for other circumstantial evidence to connect the location mark with the deceased Jadhav Singh and so he stated only to be required for a responsible officer from the fact that the investigating officer looked up for more corroborative circumstantial evidence that he did not have faith or belief in the testimony of P.Ws. 1 or 2 as regards the identity and direction as it was possible to rely upon the evidence of P.Ws. 3 or 4 that they witnessed the occurrence. It will be unnecessary to hold that there are obvious circumstantial evidence as a case on evidence that the investigating officer did not have honest belief in the truth of the preceding 2 points of circumstantial evidence merely because he had brought on record even the main part of circumstantial evidence.

6. The learned Judges of the High Court were not justified in basing their conclusion that P.W. 1 is not the author of the first information report and that it was recorded by the police station at 11 a.m. on 25-9-1974 on the evidence of P.W. 15 who is a self-confessed witness who had been cross-examined under protest. It is not possible to accept the evidence of P.W. 15 who was admittedly present in the police station along with his father and others and had admitted his father father wrong the first information report and written after his father asked him to write a letter before it to the decision of P.W. 15 at 11 a.m. on 25-9-1974 and dated it as 26-9-1974 as stated by P.W. 15. The evidence of P.W. 15 is highly discrepant for he has stated in one portion of his evidence that along with his father and others he reached the police station at about 13 a.m. on 26-9-1974 and reached from there at about 11 a.m. leaving only P.W. 1 at that place. In another portion of his evidence he has stated that P.W. 15 came to the scene of occurrence at 11 a.m. on 26-9-1974 and that he (P.W. 15) started along with others to proceed to the police station for the same of occurrence only at about 5 a.m. on the same date. P.W. 15 agreed he had further stated P.W. 15 stated for the scene of occurrence that he and the other persons reached the police station and thereafter only that the first information report was lodged in the police station. He has also stated that he accompanied P.W. 15 when he started from the police station at 10 a.m.



10-30 a.m. and that he does not know or what time P.W. 1 reached the town of Meerut. That it is not that P.W. 15 has given highly discrepant evidence regarding the time at which he reached the police station along with the other and others including P.W. 1 is also about the time at which he came without even the first information report in the possession of P.W. 14 after getting the approval of the latter for writing the same.

11. The evidence of Daya Shankar Upadhyay (P.W. 16) who was about 15 miles at Barabanki police station is that P.W. 1 came to the police station at 11.30 p.m. on 24-5-1974 with the first information report (Ex. Ka 1) and that on the basis of this report he prepared the check report (Ex. Ka 2). It has been stated in the cross-examination that Constable Ram Ramch Singh (P.W. 14) left the police station carrying the special report to his superior officer at 5.00 a.m. on 25-5-1974. In answer to questions put to him in cross-examination P.W. 14 has stated that he saw the special report to his superior officer from the police station at the morning of 25-5-1974. The investigating officer (P.W. 12) has stated in his evidence that after receipt of the first information report at the police station he personally he took up investigation immediately and left the police station in the state of confusion along with P.W. 1 and others at about 1.30 a.m. on 25-5-1974 and reached the state of confusion at about 4 a.m. afterwards delay in taking a case arose on the way and was for some time to call the long case. He admits it has been stated that P.W. 12 in the cross-examination has the first page of the case diary which is dated 25-5-1974 bears the signature of the Deputy Superintendent of Police and endorsement of the officer of the Superintendent of Police made on 26-5-1974 but not the seal of that office. From that fact alone it could not be inferred that there was delay in the receipt of the report of relevant records from the police station in the office of the Superintendent of Police though it may be that the endorsement in that office had been made only on 26-5-1974 for over according to the evidence of P.W. 16 which is unimpeached the first information report was in possession at least at 11 a.m. on 25-5-1974. In cross-examination we accept the evidence of P.Ws. 1, 10, 14 and 15 and reject the evidence of P.W. 12 insofar that Ex. Ka 1 is the only first information

report in the case and that it was verified by P.W. 16 at the station the basis of particulars furnished by P.W. 1 at 9 p.m. and handed over by P.W. 1 to the police station at about 11.30 p.m. on the next day and that only after a case had been prepared on the basis of that first information report P.W. 12 left the police station along with P.W. 1 and others at 1.30 a.m. on 25-5-1974 and reached the state of confusion at 4 a.m. The learned Judge of the High Court in response accordingly is holding on the inevitable evidence of P.W. 16 that the first information report (Ex. Ka 1) was recorded at the police station at 11 a.m. on 25-5-1974 (which has been accepted only at that time it is impossible that copies thereof would have been delivered by P.W. 16 to the higher authorities on the morning of 25-5-1974 itself).

12. The learned Judge of the High Court has rejected the evidence of P.W. 1 for two reasons namely (1) that whereas he had stated in the first information report that he went to Ballia along with the deceased on 24-5-1974 he has stated in his evidence that he went to Ballia only later at about 1.30 p.m. on that day and that was accompanied the deceased from Mangalpur which was the demand of P.W. 12 is not supported in the order sheet of the Sub-Divisional Officer, Ballia relating to the case in connection with which the deceased had gone to Ballia on that day. He does not see a discrepancy between the stated in the first information report and the evidence of P.W. 1 on the question whether P.W. 1 went along with the deceased to Ballia on 24-5-1974 or had gone to Ballia separately and met the deceased at that place at about 1.30 p.m. on that day. It is not a material discrepancy. It would appear from the fact also on the other side that no endorsement had been made by the deceased in the office that on 24-5-1974 he had gone (Ex. 16) to P.W. 1 for imaging witness that P.W. 1 who was his partner might have gone to Ballia with or without him on 24-5-1974. If he had not gone to Ballia on that day and had not accompanied the deceased from Ballia when he left that place for Mangalpur it is not probable that P.W. 1 would have been seen by P.W. 1 some after the occurrence or he could have got the first information report recorded by P.W. 16 at 9 p.m. on 24-5-1974 itself and handed a case in the police station at 11.30 p.m. on the next day and accompanied P.W. 12 to the police station in the state of confusion at 1.30 a.m. on 25-5-1974. Therefore, we accept the evidence of P.W. 1 that he had gone to Ballia

on 24/4/1974 and had left that place for Mampikoro in a bus straight up the mountain and was present in the first underground and had witnessed the same. The learned Judge of the High Court had an opportunity to examine P W 3 after on 24/5/1974 he had been in Bulima near his village in Shamitindika Zone or Bulima in Bulima and was in the forest up to 4 or 4 1/2 p.m. He had stated that he themselves hunted the tree in which the deceased and P W 1 were killed for proceeding to his village for which he had to proceed from the bus well before 1:30 p.m. They have repeatedly mentioned P W 3. When he was present along with the deceased at the time of the occurrence and had seen the occurrence merely because after one crossed the 10th step down, he was unable to proceed to Shamitindika one of them going from the glen towards Mampikoro and the second towards Mampikoro in the west and then north to the 3rd Shamitindika and the learned Judge thought that a supposition that P W 3 would have taken the road, which is contrary to 1 or 1/2 miles instead of the glen route proceeding from the glen. The learned Judge have failed to give the impression which is detrimental to the evidence of P W 3 that such young like in the forest house and therefore judge go in that forest only during the rain and that the forest must be plain and therefore they go through the river even during night. They have also failed to note even if the fact that it was night time and P W 3 would have had the company of the deceased and P Ws 1 and 2 after with by the longer road and would have had to go all alone if he went by the shorter route running through the glen. The learned Judge have repeated the evidence of P W 3 who is a trader in Bulima merely because he had stated in his evidence during 24/4/1974 that he was in Bulima for purchasing a wood block when he had purchased a wood block for his 10th. Some merchants in village a few days later. They have observed that it is improbable that P W 3 would have gone to Bulima on 24/4/1974 for purchasing a wood block when many Bulimas were available in the neighbourhood and P W 3 who trades in Bulima might purchase wood as well as strong blocks depending upon the need as rightly submitted by Mr. Dekker Advocate. The fact that P W 3 had gone to Bulima for purchasing a wood block is not a sufficient reason for disbelieving his evidence that he had gone to Bulima on 24/4/1974 for purchasing a Bulima and thus he was killed by the tree in which the deceased and P Ws 1 and 2 were killed on their return from Bulima on day 24. As stated earlier the issue of our only

P W 3 has been of P Ws 1 and 2 in the mountainous neighbourhood from Mampikoro upon which has been lost. It has been reported at 1 p.m. until at the spot and up have been headed over an 8000 ft. place named at 11.30 p.m. on the same day. P Ws 1 and 2 have all been examined by P W 3 in Mampikoro on 24/5/1974 and he is not prepared that they would find them easily and easily available for examination on 24/4/1974 until a they had not been present at the time of the occurrence and had not witnessed the occurrence. P W 3 alone belongs to Mampikoro while P Ws 2 and 3 belong to different villages as already mentioned. We therefore accept the evidence of P Ws 1 and 2 as well regarding their presence at the time of the occurrence and rejecting the same. P Ws 1 and 2 have independent witnesses and P W 3 is a respectable woman as he is a member of the Great Sanku and President of the Cooperative Society. I have admitted he was the purchaser of the deceased in the case for which he had gone to Bulima on 24/4/1974. The name of P W 3 was taking a place in the occurrence and was here for taking that he could not have gone to Bulima on 24/4/1974. P Ws 1 and 2 have deposed about the occurrence as mentioned above and we are of the opinion that there is no convincing reason for rejecting their evidence as unreliable and thereby learned Judge of the High Court were not justified at all in rejecting that evidence for the same reasons mentioned by them. We are also of the opinion that the learned trial Judge was absolutely justified in accepting the evidence of the prosecution witnesses and rejecting the respondents for the offence of murder and that the learned Judge of the High Court had no qualification whatsoever for stating that judgments and rejecting the respondents. That is not a mere when two views on the evidence available on record are possible. We therefore allow the appeal and we void the judgment of the High Court and declare that the learned trial Judge committing the respondents for the offence of murder is hereby set aside. But though the nature of present and said intended murder and the learned trial Judge committed in committing the respondents of this having regard to the fact that the occurrence took place over a decade ago we retained the respondents in custody-incarceration for life. The first learned the respondents who are no longer cancelled and committed for return into custody for taking the remaining part of the sentence.

Appeal allowed





prohibition of Sir Guog in the case has not been repudiated or transferred to another issue in the case. Justice Deane correctly pointed to changes of his designation. His prohibition in the case did not, therefore, cease on account of the change of designation. It is only he who has jurisdiction in this case. It should, therefore, be restricted to the court for further trial.

4. The above contention of the applicant based on a decision of Justice Burchett that Court in *People's League v. State* (1971) 10 F.T.R. 245, 68 C.T.R. 176 (C-113) is —

5. After having issued for both the sides and after going through the submission of People's League case before I have no quarrel with the applicant's contention that a witness who appears in the ground to claim that his case should be decided by a Judge who has heard and recorded evidence in his case unless his prohibition in the case has ceased. There can also be no controversy with the decision of People's League case that the prohibition of a Judge does not cease by mere change in his designation. But as already observed in my order dated 14.5.1998 I had agreed to deal with issue with limited content for the applicant that the above two propositions are applicable to the facts of this case because I am of the opinion that in this case Sir Guog cannot be held to be a Judge who had heard and recorded any evidence in this case within the meaning of S. 226 Cr. P.C. It is only when a Judge or Magistrate has heard and recorded the whole or part of the evidence in a case that the case becomes just heard with that Judge or Magistrate and it is in such a case that his jurisdiction does not terminate by a change in his designation. Sir Guog has admittedly not recorded any evidence in this case. He had only framed charges in the case and mere framing of charge does not amount to recording of evidence in the case. There is distinctly no ambiguity in this regard in the instant case. The relevant portion of Section 226(1) Cr. P.C. reads as under —

Wherever any Judge or Magistrate after having heard and recorded the whole or any part of the evidence then inquiry or trial

4. The words "after having heard and recorded whole or any part of the evidence" clearly indicate that the Judge or Magistrate contemplated in this Section is that the Judge or Magistrate who has recorded whole or any

part of the evidence in the case. When a Judge or Magistrate frames charge in a case under S. 226 Cr. P.C. he does not record any evidence in the case wholly or partly. I do not agree with Sir Justice Burchett that the framing of charge under S. 226 Cr. P.C. is a part of the evidence contemplated under S. 226 Cr. P.C. In fact, the recording of evidence in a case starts when the trial begins as accused witnesses and the trial continues up until the framing of the charge has substantially ended. There was no such controversy in the old Code in which the word "trial" was defined as proceedings taken in case, after a charge has been drawn up. That definition of trial has been changed in the new Code but the meaning does not mean that the legislature intended to define a charge. The confusion by itself does not have the effect of defining trial as proceedings commencing subsequent to the framing of the charge but along with it. A charge appears as accused in framing a Court under S. 226 Cr. P.C. when the Court is after considering the material on the material framing the accused as provided under S. 227 Cr. P.C. It is of the opinion that their agreement for proceeding that the accused has committed an offence. The Court proceeds with the trial of the case only when such a charge framed by it is read over and explained to the accused who, after hearing the charge, either refuses to plead or pleads not guilty to it and claims to be tried. The purpose of the charge framed by a court is to only to tell the accused the manner with which he is charged, (i) to convey to him what exactly the prosecution intends to prove and bring matter which he will have to face in the trial. Framing of charge does not therefore amount to recording of evidence in the trial which, as has followed after the charge framed over in the instant.

9. This has become further clear when Section 226 Cr. P.C. is then examined in the context. The words read as under —

It is assumed unless to prove or disprove guilt or to determine liability or to establish any other fact contemplated under S. 226 the Judge shall fix a time for the examination of witnesses and may on the application of the prosecution, cause any person, for compelling the attendance of any witness or the production of any document or other thing.

4. It may also be seen from the aforesaid that the Court must, in cases like this, determination of evidence until the recorded evidence appears in place of evidence on plead or pleads no case to the charge or a plea of acquittal or the result. The words charge, rule, trial, and the words further evidence, intervention of Legislature, and so on, are not. This Section provides for the time of a day for the presentation of evidence, when the Court proceeds to try the accused after hearing the charge either relevant to plead or pleads no case, and claims to be tried. Now, when such a date for presentation of evidence is to be fixed after the charge is framed and read over to the accused, the charge itself cannot be used as a piece of evidence in the case. Therefore, mere framing of a charge cannot be any direct or oblique evidence to substantiate the recording of evidence. It is the oral evidence placed in Section 320 Cr P.C.

5. Examining the facts of this case in the above case of the matter. It is not clear that the submission of the charge in the case does not survive under S. 320 Cr P.C. merely because he had framed charges. I will now examine the decision in the *Pratap Singh* case (1961 Cr LJ 2170) to see whether it is a case in which it has been held that such proposition on account of which a sentence can be taken in this case. See *Kanwar Saini* where upon the court stated contained in paragraph 11 of the judgment which reads as under:

2). Two kinds of cases may be put forward with a judge: (a) where the judge had framed only the charge but had not recorded evidence, and (b) where the judge had framed and recorded evidence either actually or in part, and the prosecution has not insisted at the trial in the manner referred to above. To the first category of cases, sections 320 in terms are not applicable and the submission of the judge would not be entitled to continue the hearing of the case until the judge followed by the prosecution. But, at the same time, the judge who had continued the proceedings in the trial by recording evidence and framed the charge, irrespective of the nature, would be entitled to continue the proceedings until the prosecution to that extent had not been discontinued in the aforesaid second category. The judge would continue to exercise jurisdiction and will dispose of according to law and in the light of the decision above.

6. If the above observations are strictly examined it will be clear that it has not been laid down in this case that when a judge has framed only the charge in the case, he shall be deemed to have recorded evidence in the case within the meaning of S. 320 Cr P.C. and the submission of that judge will not therefore be entitled to continue with the hearing of the case. In the present case it has been pointed out that the following two kinds of cases are put forward with a judge:

- (a) Where a judge had framed only the charge but had not recorded evidence; and
- (b) Where the judge had framed and recorded evidence either actually or in part.

7. To the first category of cases, it has been already held in this case that:

Section 320 cannot be mechanically and automatically applied and would not be entitled to continue the hearing of the case from the stage before or by the prosecution.

8. It is not correct to state that a category of charges is framed that the judge is bound of the matter, and his jurisdiction would not be lost but it is continued in the second category of cases, the judge would continue to exercise jurisdiction.

9. Undoubtedly the case before us does not belong to the second category but it belongs to the first category. Consequently, it cannot be held that the jurisdiction of the judge to proceed with the trial has not been terminated and he is still owner of the matter. The case cannot, therefore, be transferred to the Court for trial.

10. Sri Kanwar Saini has urged that the above decision of *Pratap Singh* case (1961 Cr LJ 2170) will apply to the first category also. It is with the submission of Sri Kanwar Saini that I do not agree. As already pointed out above, the submission in the *Pratap Singh* case with this category of cases in S. 320 in terms are not applicable. It clearly stated that in this case, a first class bench affirmatively held that in the first category of cases S. 320 Cr P.C. applies. When the decision is not applicable in the category of cases, the jurisdiction of the judge or Magistrate is lost and only framed a charge in the case cannot be held to survive when he is transferred from the Court. But he would be entitled to hear

a presumption in the case. Yet there is fact basis obtained in the People's Temple case that in cases of this category, where S. 48-C, P. 4, does not apply, the necessary condition of the Judge would not be satisfied to require the handing of the case from the mag's left over to his jurisdiction. Obviously, the observations quoted about the jurisdiction of the necessary Judge to proceed in the trial from the mag's left over by his performance or failure the charge again, it will be for the necessary Judge to take note of that observation while proceeding with the trial but it does not mean that the observation perpetuates that a fact issue also arises. (Guidelines apply the professional Judge shall be deemed to be seized of the matter and has jurisdiction to proceed with the trial continues.

15. Therefore, it is concluded that there is no fact issue, the jurisdiction of the C. P. Q. to proceed with the trial continues even so that he is not seized of the matter. The proper law the transfer of this case to the Court cannot be granted.

16. The application is therefore dismissed. The respondent's case is also dismissed. There is no order as to costs.

*Application Dismissed*

1986 ALL L. J. 26

= AIR 1986 Supreme Court 76

*From Allahabad*

D. A. DESAI AND

RANDANATH YADRA II

Crd Appeal No. 4038 of 1984 arising out of S. L. P. No. 18996 of 1983 C-14-9-1984

HARRIS v. Appellants: The Hon. The Chief Justice of High Court of India as a Guideline and others Respondents

Construction of Indian Art 136 — Sales Assistant in High Court dismissed from service during prolonged absence — 28 years of service rendered by Assistant at time of dismissal — Held, there was scope for taking benefit under C.M. W. P. No. 4579 of 1984 (C-18-3-1984) (1986)

— Order of dismissal converted into one of compulsory retirement on ground that retired Assistant C. M. W. P. No. 4579 of 1984 (C-18-3-1984) (AIR, 1986) reversed

(Para. 3, 4)

Mr. J. S. Bhat and Mr. L. K. Singh, Advocates for Appellants; Mrs. Shobha Desai, Advocate for Respondents

**JUDGMENT** — Special leave granted

3. We heard Mr. J. S. Bhat learned counsel for the appellants and Mrs. Shobha Desai learned counsel for respondents. Appellants who had serving as a Sales Assistant who done and more service in the Registrar of the High Court of India as a Assistant. The High Court having been dismissed, we find the appeal by special leave.

4. It appears that appellants joined service as a employee in the High Court on April 25, 1958. By an order dated April 28, 1976 he was placed under suspension and thereafter he was dismissed from service on November 20, 1976. At the time of dismissal he had rendered service for over 28 years. An appellant was dismissed from service. He has been denied several benefits such as pension, provident fund and gratuity to which he would be entitled if he was not suspended. He suggested to Mrs. Shobha Desai learned counsel for the respondents to enquire whether any pecuniary or material benefit can be given to the appellants on the basis that he had rendered service for 28 years the response is positive. However Mrs. Shobha Desai learned counsel for the respondents pointed out that in law appellant would not be entitled to any retirement benefits or value of the benefits that he is dismissed from service by way of pension.

4. Appellant was on post date transfer. We do not propose to examine the propriety of his suspension for which the High Court thought it is proper maximum punishment is dismissal from service compulsorily during total unavailability. Whether in any manner deserving from the very nature of the High Court for one of the reasons that there is no scope for taking a better transfer, were in the interest of public interest awarded to the appellant. The language if it all would render the post dismissal life of the two good employees a little

admission and keep the applicant out of the money and admission.

5. How much is the interest in the office (seat) in the matter of punishment? Applicant cannot be punished to serve. He was removed out of the law employment. Therefore, the legal course open to him is to contest the order of punishment and out of compulsory payment to that which during service is the applicant for will be consequential benefit.

4. We accordingly allow the appeal against the order of termination and out of compulsory payment. Consequently the respondent shall pay Rs. 1500 per month pension to the applicant from November 22 1976. The amount of pension is worked out by the respondent on a regular basis to the Court. The amount of pension shall be paid within five months from today and the pension payments order shall be issued within the same time for drawing the pension regularly from month to month. Provided that said gratuity shall be paid if admission to the applicant on the same occupation. The appeal is allowed to the extent only. There will be no order as to costs.

Appeal partly allowed.

1980 ALL L J 264

O P SARDHA AND B L YADAV JJ

Anita Kumar Singh, Petitioner v. Gurukul Kangri University and Another Respondents

Oral Misc. Writ Petn. No. 411 of 1976 (D 14-7-1976)

Continuation of India, Air. 261 - Admission to post-graduate course - Student filing a phoney copy of forged mark-sheet with admission form - Overseeing not explained by him as he subsequently applies including himself and the true copy of mark-sheet without recovering - Held if opportunity of showing was not given before cancelling admission, nothing further could be inferred therefrom. AIR 1976 SC 287, AIR 1976 SC 293 and AIR 1976 SC 1267 (all on).

(Para 34)

Case Related Chronological Facts

AIR 1976 SC 287

11

HC/HO/CS/16/1976

AIR 1976 SC 287 12  
AIR 1976 SC 293 3  
AIR 1976 SC 1267 13  
AIR 1976 SC 287 3  
1976 3 AIR 287 13 - 1976 3 AIR 287 13 45  
The Case 1976 SC 1267 13 - 1976 3 AIR 287 13 45

Yashvir Singh for Petitioner Standing Counsel for Respondents

O P SARDHA, J. - By respondent order Art. 226 of the Constitution, the petitioner has applied for a writ of mandamus directing respondent 1 to admit him to M.A. (Agricultural Botany) course for 1974-75.

2. The petitioner applied to the Principal of Mark Mansoor Tameer Post Graduate College, Bulda, for admission to M.A. (Agricultural Botany) course for 1974-75. He submitted a photocopy of his mark-sheet of B.Sc. (Agriculture). According to the rules his mark-sheet came to 34.33. The admission list in Annexure 1 to the writ petition shows that 13 seats in the general category. The petitioner was at serial No. 13 of the list. He was however not admitted. On 22nd September 1974 the Commission decided to cancel the admission forms of three candidates including the petitioner for having submitted forged marksheets along with the admission forms.

3. We have heard Sh. Yashvir Singh, learned counsel for the petitioner and Sh. S. N. Gaurav, learned counsel for respondent 1. The latter has produced before us the relevant file of the petitioner. On the request of the counsel we are deriving the pertinent facts at the admission stage.

4. The petitioner's admission form has been cancelled on the ground that in the phoney copy of the mark-sheet submitted by him along with the admission form, 28 marks were shown in Vio paper. On 26th September 1974 the petitioner gave an application to the effect that he had in fact secured 34 marks and not 28 marks and had another copy of the mark-sheet, issued by respondent 1. These entries along with others who had submitted forged mark-sheets along with the admission form. The Commission appointed by the Principal of Sh. Mark Mansoor Tameer Post Graduate College took serious note of the matter and decided to cancel the admission forms of all the three candidates.



5. The petitioner had filed a photostat copy of the mark-sheet along with an affidavit form. When questioned he learned content of it he could produce before the mark-sheet of which a photostat copy was filed with the form. The learned learned informed us that the real mark-sheet was lost. As the petitioner was eager to submit a true copy of the mark-sheet in the name of affidavit he obtained another copy of the mark-sheet and filed the same along with his application dated 20th September 1984. This mark-sheet shows that he secured 18 marks and not 20 marks as he claims. The photostat copy of the mark-sheet makes it highly probable that 1 of 18 was corrected and changed to 2 to make it read as 20.

6. In the application dated 20th September 1984 sent by the petitioner there was an explanation of the overwriting. The petitioner stated that another true copy of the mark-sheet was being filed as there was mistake in the photostat copy of the mark-sheet filed earlier. "How could he statement as filing a photostat copy of a forged mark-sheet?" We could hear the mark-sheet. "The office of the Principal, Sri Murli Manohar Tanna Poo Gurukul College, Dehra, could we do so to verify the true copy of mark-sheet. There was overwhelming circumstantial evidence which pointed towards the guilt of the petitioner."

7. The rule of the play is across was stated in *Viswanath v. Bhawanji* (1950) 1 A.J. 22, 175 is.

"The principle and procedure are to be applied which, in any particular situation or set of circumstances brought particular."

8. In the case of *Suresh Keshav v. University of Kerala*, AIR 1964 SC 196 it was held:

"The rules of natural justice are not inflexible rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case to place the administration of the Tribunal and the Minister under which a Government."

9. In the case of *Tribhuvan Singh v. Board of High School and Intermediate*

*Education*, U.P. Additional AIR 1975 A.J. 1 (1975) it was held that there is no such any statutory requirement nor any requirement of principle of natural justice which compels the Government to give a personal hearing to the candidate.

10. In *Judicial Review of Administrative Action* by A. S. de Smith 2nd Edition page 174 the learned author says:

"In the administrative law a person has a right to give notice and opportunity to be heard more the right to be excluded by implication where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of pre-emptive or remedial nature."

11. In *Mandla Gaurish v. Union of India*, AIR 1982 SC 575 at p. 579 Bhagwati J referred to the mark-sheet as follows:—

"There are certain well recognized exceptions to the rule absolute person, rule established by judicial decisions and they are mentioned by A. S. de Smith in *Judicial Review of Administrative Action*, 2nd Edition, 1975, 181-187. If we analyze these exceptions a interestingly it will be apparent that they do not in any way militate against the principle which requires fair play in administrative action. The word exception is really a misnomer because these extraordinary cases the such absolute person rule is held applicable not by way of an exception or surplusage in some but because nothing value could effectively not offering an opportunity to present or meet a case. The such absolute person rule is intended to apply justice with the law and to ensure be applied to define the rule of justice or to make the law inflexible about satisfying self-interest or private contrary to the requirements of the common."

12. In *Arvind Kumar Singh Gull v. Chief Election Commissioner*, AIR 1978 SC 851 the rules of exclusion were considered and it was observed at para 41 p. 892.

"The exceptions to the rule of natural justice are numerous or rather not but a theoretical idea of excluding the fact that in those extraordinary cases nothing value can be offered by not offering an opportunity to present or meet a case."

[illegible][illegible]

18 The fact that in the equation that represents order in the domain an expression of linked modification appears is, in the paradigm, not a consequence of the occupation in the role of such element, *because*.

26. The passage is dominated with a strong sense of \_\_\_\_\_.

**Abstract**

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**Abstract**

Submitted (Closed) Date: Application is: None  
None, Document: None

October 1999

(d) *Provençal Small Game Counts, Apr. 19 of 1969, 5 to* — U.P. Urban Building, (Magdalen of Loring, West and Eastern Apr 1972), 4 to — last few sections — Ray of east — heading in to — Documentary evidence as to east of east on ground — Conclusion as to east of east based on appearance of evidence — Is a heading of last — Conclusion cannot be used to be evidence.

(By U.P. Union Building Corporation of  
Loring, West and Cushman, Inc. (20 of 1973,  
S. 20) (Exemption) to liability Amendment  
Act (U.P. Act 28 of 1974) — Application —  
Breach under S. 20(a) — Failure of trustee to  
deposit amount of rate on date mentioned in  
warrant — Trustee not entitled to benefit under  
S. 20(a) — Exemption coming into  
force after filing of last — Amendment —  
Exemption cancelled by the Amendment  
Act applies to suits which have been filed  
before coming into force of the Amendment  
Breach, where the trustee did not deposit the  
amount of rate on the date mentioned in the  
warrant which was subsequent to the coming  
into force of the Amendment Act, the trust  
was not entitled to benefit of S. 20(a).

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If the owner wanted to take the benefit of s. 23(a) he had to deposit the amount in accordance with law that was applicable on the date when he was required to deposit the amount. If the owner wanted to derive benefit of the liability of payment on the ground of default he had to deposit the amount on the date as per the Explanations added in S. 23(a) by Amendment Act 1978. The term that the law had been laid earlier cannot take away the effect of the Amendment proposed added by the Amendment Act of 1978.

Original judgments and orders of Civ. Judge  
Meyers on Original Nos. 21 of 2000  
Cv. 0002-0004

specifies a consequence or a privilege and, therefore, the mode of satisfying it, the mode so prescribed must be adopted as the alternative mode is such constant conflictual imperative.

Blum Co.

**Case Related Chronological Facts**  
 1984 JUL 12:6 - Order 1 All Rem. Cas 410-11-12

In Direct Petition for Appoint A & B. Top for Opponent Party.

**ORDER** — This is a motion under S. 26 of Small Claims Courts Act Cap No. 26 of 1974 was filed by the opponent party Barry Blum against the respondent in the Court of Judge Small Claims at Miss as for variation of the respondent from the accommodation or disposition for recovery of a group of rental and damages for sums of occupation of the rate of \$5.00/ per month from July-Dec 1979. The rate of the plaintiff opponent party is that the respondent has been for some at the rate of \$5.00/ per month. He demanded payment of rent through a notice dated 27-3-1979 and also threatened his attorney that in light of the notice neither the respondent paid the amount of rent nor vacated the accommodation and hence the summary is now for being the amount of which the plaintiff opponent party.

2 The clause of the respondent was that in fact the rate of rent was \$5.00/ per month. He stated however that the rate was not increased at the rate of \$5.00/ per month so that the plaintiff opponent party could get the sum vacated from the respondent as they came under the pressure of payment of higher rent. During the pendency of the case when the respondent did not comply with the provisions of S. 27 B and C of P.C. and he did not deposit the entire balance was struck off on 12-1979. Against the order dated 12-1979 striking off the defense, respondent was filed in this Court. This remedy was allowed by the court on 15th April 1979 setting aside the order striking off the defense and a further decree was entered that the sum be stayed off in accordance with law.

3 After remand by the court the matter was again examined by the trial court and continued on, and was decided on 13th Dec 1984. It is this order dated 13th Dec 1984

which has been engaged in the present motion.

4 I have heard the learned counsel for the parties.

5 Learned counsel for the petitioner has contended that —

— the finding recorded by the court below that the rate of rent was \$5.00/ per month is manifestly erroneous.

— the respondent is entitled to the benefit of S. 26(4) of U.P. Act 13 of 1972 and the finding to the contrary is erroneous.

On the application S. 26(4) read by U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (Amendment Act 1972) U.P. Act 26 of 1974 is not applicable to the case of the respondent.

6 In so far as the first contention of the learned counsel was concerned the court below has examined every document and evidence on record and therefore came to the conclusion that the rate of rent was \$5.00/ per month. The rate set up by the respondent that the rate of rent was \$5.00/ per month was not accepted by the court below. From the reasons given by the court below, it seems that there was documentary evidence to establish that the rate of rent was \$5.00/ per month. It cannot be said that the finding recorded by the court below in this regard is in any manner manifestly erroneous. In fact it is based on appreciation of evidence on the record and after examining the evidence of both sides the court below came to the conclusion that the rate of rent was \$5.00/ per month. This clearly is a finding of fact based on appreciation of evidence. In the circumstances, the contention raised by the respondent challenging the finding in regard to the rate of rent is in my opinion, without substance.

7 So far as the second and third contentions of the learned counsel are concerned I shall consider both these contentions together.

8 Section 26 sub-cl. (4) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) provides that in any suit for recovery on the ground mentioned in S. 26(1) sub-cl.

if at the first hearing of the suit the respondent conditionally agreed to tender to the landlord or deposit in court the amount estimated of cost and damages for use and occupation of the building and furniture together with interest thereon at the rate of 15% per annum until the landlord's costs of the suit. The court may in lieu of passing a decree for payment on the ground of default pass an order allowing the action against the building and furniture on the ground. Subsection (4) of S. 20 of the Act is a time-bar provision giving the benefit to the tenant of being informed of eviction on the ground of default, even though to fit in the landlord a conditional agreement of payment is made out under it, but in sub-s. (2) An Explanation was added to S. 20 sub-ss. (4) of the Act defining as to what meaning could be given to the words first hearing of the suit. By the U.P. Act 13 of 1976 Amendment referred to as the Amending Act the following Explanation was added:

**Explanation —** For the purpose of the subsection

(a) the expression first hearing means the first date for any step in proceeding instituted on the instrument moved on the defendant;

(b) the expression cost of the suit includes one half of the amount of the decretal for payable for the respondent suit.

9. The Amending Act received the assent of the President on July 1, 1976 and was published in the U.P. Gazette on 16th of July 1976.

10. In the instant case it is not disputed that the date of hearing fixed to the respondent which was served on the defendant was 15th July 1976. On the date an application was moved by the tenant for the respondent to pay decretal that the respondent that has been fixed to the date of hearing but since he has been engaged in a second floor structure on that date he could not prepare the amount necessary to meet off his work and hence he prayed the order that of hearing be fixed. The respondent subsequently allowed case of 29th Aug. 1976 for filing the amount decretal and filed 25th Aug. 1976 for hearing of the case. On 29th Aug. 1976 written statement was filed by on 29th Aug. 1976 when the case was listed for hearing another appearance

was necessary adjustment of the hearing to the ground that the respondent when the defendant had presented had not come on account of their personal work and hence some other date be fixed. The court then fixed 12th 1976 for the hearing. On 12th 1976 the Presiding Officer was on leave. 12th 1976 was fixed for hearing. Whether the respondent was ready to accept the case is no not an relevant in all for determining as to whether the respondent was entitled to the benefit of S. 20(4) of the Act. In the respondent had been served on the respondent and the Explanation to S. 20 sub-ss. (4) added by the Amending Act had already come into effect on 16th July 1976 which was the date fixed for hearing of the case. Accordingly on 16th July 1976 the petitioner did not deposit the cost and damages as required by S. 20(4) of the Act. Since the respondent did not deposit the amount on that date, he is not entitled to the benefit of S. 20(4) of the Act.

11. In *Sanyal v. Deewan Judge Kham (1981) 1 All India Cases 1981 (1981) 42 L.J. 2086* a Full Bench of the court had no occasion to consider the effect of the Explanation added by the Amending Act. It was unanimously held by the Full Court that respondent to the decision of the court, earlier than the coming into force of the Amending Act, a person would be a defendant if the amount had not been deposited in terms of the Explanation added by the Amending Act. It agreed as follows:—

"The provision of S. 20(4) are by way of providing local protection for a tenant who has been a defendant and has thus forfeited the protection of the rent control law. It gives him a further opportunity to redeem his position which has the effect of depriving the landlord of the right, that, has accrued to him as a result of the earlier default of the tenant. The Legislature cannot, therefore, be said to have acted unreasonably in requiring the tenant to comply with the provision of S. 20(4) even strictly then with the provision of G. 24/ B. 5 Case 2 C.

12. In view of the principles laid down in the case of *Sanyal (supra)* it is clear that the respondent did not deposit the amount as required under sub-ss. (4) of S. 20 of the Act

an addendum with the Explanations added to the said addendum by the Assessing Officer and as such the addendum is not treated to the benefit of S. 204(4) of the Act.

13. The argument of the learned counsel for the petitioner that the Explanations added by the Amending Act was not applicable is based on the hypothesis that the Explanations is not retrospective but prospective. His argument at that time the law had been fixed earlier. Therefore in such cases the Explanations added by the Amending Act did not apply. In response thereto, it is a wholly fallacious. With the coming of the Amending Act of a treaty agreed to take the benefit of S. 204(4) of the Act, he had to deposit the amount as ascertained with him, that was applicable on the date when he was required to deposit the amount. On 15th July 1976 when the date for depositing of the tax was fixed, in the Amending the Explanations was fully applicable. If the treaty wanted to relieve himself of the liability irrespective on the ground of default, he had to deposit the amount on that date. The amount had to be deposited as law existing on the date of the Act. The question of retrospectivity is wholly irrelevant. The mere fact that the law had been fixed earlier cannot take away the effect of the beneficial provisions added by the Amending Act. If the treaty makes a statement as a privilege and prescribes the mode of acquiring it, the mode so prescribed must be adopted as even otherwise mode as such must be construed against.

14. Explanation to S. 204(4) of the Act inserted by Amending Act of 1976 applies to rates which have been fixed before the coming into force of the amendments. In that case, confidentiality fixed by the learned counsel for the petitioner.

15. In the result, the petition fails and is accordingly dismissed. In the consequences of this order, the parties are directed to bear their own costs.

*Revenue Assessed*

1986 ALL L. J. 291

R. 141 (141) 1

*Raj Kumar, Petitioner v. Assistant Super Commissioner and Appellate Authority under U.P. Sugarcane (Processing Tax) Act, 1961*  
[Madhya Pradesh and another, Respondents]

*Civil Appeal No. 198 of 1985 (D. 12-7-1976)*

**U.P. Sugarcane (Processing Tax) Act (5 of 1961), S. 20(4) — Exercise of option — Option exercised in present form — Rate of duty of unit authorized by separate order — Option not revised.**

Where the owner of a unit that exercised option in Form XII and estimated upon the rate of duty by a separate order that by that date was under the option revised.

(Para 4)

The proviso to S. 20(4) makes it clear that the specification of the date in the estimate is not final. It can be altered depending on the change of duty. The absence of date of unit of unit under S. 20(4) therefore, could not render the option invalid.

(Para 4)

*J. M. Bhatia, for Petitioner, Standing Counsel, for Respondents*

**ORDER.** — In this petition directed against orders passed by Assistant Super Commissioner (Appellate Authority) under U.P. Sugarcane (Processing Tax) Act, 1961 and Khandwa Inspector and assessing authority the question that arose for consideration is whether or not and circumstances of the case it can be said that petitioner had not complied with the provisions of proviso to S. 20(4) of U.P. Sugarcane (Processing Tax) Act, 1961 (hereinafter referred to as Act) read with Rule 13-A.

It thus facts as they emerge out of affidavits filed by both parties are that for assessment year 1977-78 petitioner exercised an option in August, 1976 to be assessed on unitized basis as provided by first proviso to S. 20(4) of the Act. The option was exercised in Form XII, Schedule-I, Part I. 1976 provisions further authorized the assessing authority that he shall not be sent from 15th Dec. 1976 to

was approved as office of issuing authority on the January, 1978. Since this document was the petitioner paid advance tax as provided in R. 12(d) for the year 1978. per month receipt but it reduced the amount proportionately for month of January the month in which tax was started and April when the tax was closed on Feb. The letter was also received by 1978-80. In January 1981 petitioner received an order of Assessing Officer requiring petitioner to pay Rs. 20,000/- over and above the payment that had already been made in 1978-79. This amount was deducted as a deduction but it was pointed out that since it was not by petitioner but was not mentioned the date from which tax was to start knowing it was not in accordance with rule 12(d). Therefore, he was liable to pay tax on actual purchase made in a. he was aware of his duty as a taxpayer but he was using the demand. The appellate authority treated the arguments advanced on behalf of petitioner. But by a copy of order without discussing any reason dismissed a. by saying that he did not find any error in assessment order.

3. That the order of appellate authority is liable to be quashed for being bad in law of no doubt. Not only the order of assessing authority was erroneous it being issued without giving any notice to petitioner but also would result in damage to state that proceedings should. That because upon receiving a return or anything whatever has been filed in assessing authority and the order of assessing authority the order are mandatorily reversed unless it may be considered that in the assessing authority it was stated that notwithstanding by petitioner that it was going to start on 1st Jan 1978 on the January 1978 was reversed on 1st January 1978 but later before that date the application sent by petitioner that stating order is to be reversed on ground that it had been notwithstanding authority to rule the petitioner could not claim any relief on a. As it appeared in the copy that the interest working account was placed case to the supplementary affidavit clarifying the exact date when such application for correction was to be treated as assessed case in Form 12(d) was approved. And in present case the order had issued that it was reversed in 1981 by the same order by which original demand was created. Here the petitioner's affidavit

afforded in the such appropriate affidavit on issue of second assessment (petition) previously issued. It is expected that department shall take cognizance of it and correct it accordingly to be more correct and correct in this. Court please give reference on affidavit filed on behalf of state.

4. Further to S. 1 of the Act provides a tax to pay on on the quantity of cigarettes actually purchased or assumed to be a tax purchased. Section 12(d) further provides that order should be submitted by such date as may be specified in the order or in the order of assessment year. In pursuance of the submission R. 12(d) has been issued. It is clear that the date and manner in which order should be submitted. Section 1 provides no contrary view in way of discharge in Form 12(d) so as to reach the Assessing Officer and the Assessing Officer under registered order or before the expiry of such order in 12 days before the start of the assessment year. It further appears that to specify the date from which is decided before the year. The two provisions in the order are appropriate. The number of days when an order is made is not the date from any day earlier or in the order in the date specified in the order. Thus in that order is a wrong one with before a decision to start and before the date specified. This provision therefore makes it clear that compliance of date in the order is not final it can be altered depending on receipt of payment. The absence of date of start of year in Form 12(d) therefore, could not render the order liable to be reversed. Again from R. 12(d) requires order of a tax assessing officer to pay tax by 12th day of the month immediately preceding the month in which tax is due. It was argued that petitioner deposited advance tax in regard to this rule and it was accepted by assessing authority. Further the assessing authority order of specifying that it was made on or under R. 12(d) about any other amount to be paid in addition to what petitioner had deposited tax. The date of petitioner's affidavit that the order was submitted by him in 1981 accepted but was not approved as he well known. In the case of the matter it is not necessary, to discuss if such report could have been made for reporting. Order reversed by 1978-79 in this. In fact the purpose of specifying date for start of year



in judgment in the way of the petitioner's suit to decide the claims of the petitioner regarding the application for setting aside the ex parte order dated 26-12-1974. Case for dismissal. (Para. 12)

#### Case National Channelling Bank

1981 UPLT NOC 207	1981 Ban. Rev. Dec. 237	12
1982 UPLT NOC 146	1981 Ban. Rev. Dec. 1	7
1979 A.L.J. 312 (1980) 1 Ban. C.P. 7		12
AJR 1977 Cal 352		12
AJR 1979 A.L. 411		14
AJR 1979 A.L. 494		14
AJR 1967 Ban. 389		11
1965 A.L. 1244	1961 Ban. Rev. Dec. 245	3
AJR 1964 Madras Bharat 4		11
AJR 1961 A.L. 252		12
AJR 1954 A.L. 124		11
AJR 1971 Cal. 70 (3)		14
AJR 1964 Cal. 130		12
AJR 1961 Cal. 146		11
AJR 1953 A.L. 2		11

Mrs. S. S. Singh, for Petitioner B. A. Yashwanth Rao, Thiruv. S. S. Singh, Standing Counsel, for Respondents.

**ORDER** — Some circumstantial details had been given in the previous writ petition in that the appellate authority decided the dispute against the petitioner in para. 10 (C) 1974. Against the ex parte order various petitions were filed and they were dismissed by Districtal Court through its order dated 15-10-1975 in a writ filed from Bangalore A. 2 attached with the writ petition. During the pendency of the various petitions it appears that the petitioner had moved an application for setting aside the ex parte appellate order dated 12-12-1974 on 20-2-1976. Dismissal of the writ under 22 U.P. Constitution of 1950 (Art. 226) placed on 1-2-1975. The appellate authority dismissed the application for setting aside the ex parte order dated 12-12-1974 through its order dated 7-12-1976. Against the order the petitioner preferred various petitions which have been dismissed through the order dated 13-9-1977. Aggrieved by the order of the appellate authority and the revisional court, the petitioner had approached the Court under Art. 226 of the Constitution. The writ petition was allowed by me on 24-8-1980. But the writ was issued because there was no proper service upon the consenting opposite party in the writ petition.

Now the consent for the parties have been filed.

3. The learned counsel for the petitioner accepted the reasoning in my judgment dated 24-8-1980 and has contended that the impugned judgments of the appellate authority and the revisional court deserve to be quashed.

3. The learned counsel for the consenting opposite party has submitted in reply that since the order dated 24-8-1980 has been recorded, it should not be looked into and the case should be decided upon the reasoning in the judgment. According to the learned counsel for the consenting opposite party the writ petition is not maintainable. It is his contention that the impugned judgment of the revisional court is a number of wrong judgments were dealt with and all the parties who were before the revisional court, have not been impleaded in the present writ petition. Therefore, the writ petition is not maintainable. Second submission made on behalf of the consenting opposite party is to the effect that the appellate order dated 12-12-74 had merged in the order dated 15-10-1975 passed by the revisional court. Therefore the impugned judgments do not suffer from patent errors of law and the writ petition deserves to be dismissed. Third submission on behalf of the consenting opposite party is to the effect that the writ petition is not maintainable because the provisions of para. 12A and 12C U.P. Canal Laws and Rules (Prohibited Areas Manual) had not been complied with and the consent for the petitioner were duly withdrawn by the Local Management Committee. Therefore, the writ petition should be dismissed.

4. There occurred the summons issued on behalf of the parties. I am sending a copy of the consent of the learned counsel for the consenting opposite party that the writ petition is not maintainable for non compliance of the provisions of para. 12A and 12C U.P. Canal Laws and Rules (Prohibited Areas Manual).

5. A learned single Judge of the Court in 1981 Ban. Rev. Dec. 249 (1981) A.L.J. 558) Local Management Committee (Naga Pater) Board of Revenue, U.P. Allahabad) had indicated this.

Para. 121. Given Status. Material is only a document given by the State Government to





of the appellate authority dated 21.12.1974 has been confirmed by the revision court through its order dated 10.10.79 on the ground that there was no prima facie case for remission. However, the order of the appellate authority dated 21.12.1974 and merged in the order of the revision court dated 9.10.1976, is not law as contended that the appellate authority and the revision court were fully justified in dismissing the remission application because the revision against the ex parte order had already been dismissed. The learned counsel for the respondent, opposite party, emphasized the scope of merger and pointed out that the impugned order is broader than the scope of law, therefore, the writ petition should be dismissed.

11. The learned counsel for the petitioner has no doubt, submitted in the proceedings in AIR 1974 Cal 108 *Rameshbabu Akshay v. State of Andhra*, AIR 1974 Cal 102 *Ram Babu v. State of Andhra*, AIR 1977 Cal 277 *State Farm Dep. v. Union Carbide Corp.*, 1979 AIR 2212, 22 *Chitra Singh v. District Judge, Bareilly* and has contended that the theory of merger of the appellate order in the order of the revision court dated 10.10.79 would not be applicable to the facts and circumstances of the present case.

12. I have gone through the allegations made by the petitioner in the writ petition and deal with them. In the present case the order of the revision court dated 4.10.79 is to the effect that the revision petition was not maintainable due to the circumstance that the petitioner of the writ petition S. 22 of L.P.C.R. Act had taken place. Therefore, there is no question of the revision court or scope of the challenge to the findings of the revision court in the subsequent order of the revision court in the present case. In the revision court, no question of merger of the appellate order in the order of the revision court arose in the circumstances of the case. The revision court in its order dated 23.4.1977 has expressly stated in holding that the order dated 10.10.1976 would be final between the parties. It has failed to appreciate that the scope of the previous judgment dated 10.10.79 was quite different from the scope of the revision being dealt within the impugned order. The revision court has not indicated in the impugned order as to whether the petitioner was entitled to remission of delay in

preferring the remission application. Since the revision court did not state such the scope of the remission application, I believe, order against the petition arose of law and therefore be quashed.

13. It is also submitted that the order dated 9.10.76 is not in consonance with the decision of the Court reported in AIR 1973 Cal 481 *Bhawan Singh v. State of Punjab* and AIR 1973 AIR 1818 *Shah Bahadur v. Dy. Director of Consolidation*. However, that order has not been challenged by the petitioner which is reasonable view, therefore, it would not be proper to quash the order as the petition was pending. When revisional direction would be final between the parties, but in the present case the order dated 4.10.1976 would be considered as to extend its life on the order of the appellate authority dated 21.12.1974. The petitioner stated that the revision petition was about the merits of the ex parte order, but order is not passed going into the merits and petition the consequences, order could consider then, since no prima facie case for the absence of the petitioner on 10.10.1974 and whether the petitioner is entitled to continuation of delay in preferring the remission application. This shows the scope of the revision petition going on before present respondent, a different from the scope of the revision petition dealt with by the revision court through its order dated 10.10.1976. In my opinion the order dated 10.10.1976 cannot be said to be important in the way of the law. Hence, even to decide the claims of the petitioner regarding the application for staying order in ex parte order dated 10.10.1976.

14. In the writ petition, petitioner submitted in part and the impugned judgment of the revision court dated 23.4.1977 is hereby quashed and the revision court directed to re-examine the claims of the petitioner regarding staying order in ex parte order dated 10.10.1976 in the light of the circumstances made above. The court-fee was made in the filing required in 1981 Sec. 307 (1)(b), UPLD, NOC 1079 Sec. 307, Sec. 307 v. Dy. Director of Consolidation. Judge would also be taken care of in the circumstances of the case the parties shall bear the court costs.

Prisoner party allowed.

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A. N. VADHIA J.

Bhar Shandor, Applicant v. Vijay Kumar Rangaraj and others, Opposite Parties.

Civil Appeal No. 115 of 1984 (20 to 25.1.1984).

(A) Ord P.C. 13 of 1908, O. 23, R. 1 and Explanation (as added by Allahabad High Court) — Compromise — Validity — Parties reaching settlement — Court recording joint statement of parties and passing order in accordance therewith — One of the parties not signing order — Is it not valid?

Order O. 23, R. 3 as drafted provides that an agreement or compromise has to be arrived at and signed by the parties. Where thereafter the parties submit before the court an agreement or compromise for an order the same can be recorded and orders be passed in terms thereof. It is contended to be wrong and signed by the parties. In this Explanation as added by the Allahabad High Court to O. 23, R. 3 stated that, with that requirement in secondary explanation 7 and explanation require the agreement and compromise, with the signature of the parties concerned or their Counsel as recorded by the Court and the signature submitted with the statement of the plaintiff or his Counsel recorded by the Court. It is apparent that the provision in the Explanation substantiating a joint statement of the parties for agreement and compromise necessarily obviates the requirement under R. 3 of O. 23 of the agreement or compromise to be in writing signed by the parties.

(B) vide

Where the Court recorded the joint statement of the parties on their reaching a settlement and passed an order the order would not be treated merely because one of the parties did not sign before the order recording the joint statement of the parties.

(Para 16)

(B) Ord P.C. 13 of 1908, O. 23, R. 1. Explanation (as added by Allahabad High Court) and S. 115 — Parties coming into compromise — Court recording joint

statement of parties in regards settlement — Party challenging order according statement as untrue, not challenging its contents before Court set as grounds of revision — High Court will assume that statement was correctly recorded — Order of Court appearing incorrect on basis of power conferred upon settlement, not material (Para 14)

(C) Ord P.C. 13 of 1908, O. 23, R. 3 Explanation (as added by Allahabad High Court) and S. 115 — Compromise between parties — Court appearing incorrect because it is in conformity with order under compromise — Revision — One party alone taking objection that compromise was not in accordance with the scheme of interpretation of law — Parties having reached settlement, the disposal of case in a particular manner as recorded by court under said of objection would not be questioned at the instance of one submitted as revision (Para 14)

B. D. Wadhwa, J. (Allahabad Bench) and A. C. Wadhwa, J. (Allahabad Bench) vs. B. D. Wadhwa, J. (Allahabad Bench) and A. C. Wadhwa, J. (Allahabad Bench).

**ORDER** — This appeal is directed against an order dated November 21, 1984 passed by the learned District Judge (Karnal) appointing one Mr. Mahesh Kumar Jain as an arbitrator to discharge the functions of the Board of Trustees of a trust in regard to which a suit No. 42 of 1984 was filed by the opposite parties Nos. 1 to 4 for the disposal of the applicant also was entered in defendant No. 2 in the suit as well as Anand Kumar, the opposite party No. 5 herein (defendant No. 1 in the suit and Ram Chandra, the opposite party No. 7 (defendant No. 4 in the suit) is trustee as well as for it declares that their members be filled up either by election or by nomination or in any other manner which the court might deem fit and proper.

2. During the pendency of the above suit an application was made at the appearance of a referee. While this application was pending the parties are alleged to have entered into a compromise recorded by the Court before which the suit as well as the other suit No. 2 was agreed to be disposed of in terms of the statement made by either the parties themselves or their counsel. One of the terms of the compromise submitted between the parties was that all new members are elected and court may appoint a referee to discharge the functions of the Board of Trustees which was to stand suspended from the date of appointment of the

\*Agreed judgment of B. C. Anandji. See *Vijay Kumar Rangaraj* O. 20 of 1984.

reason. It is in pursuance of the alleged compromise that the respondent filed the writ passed by the court below, appointing the Plaintiff as an interim receiver.

3. It is significant that the order appointing interim receiver is being challenged only by Hani Shaker and by no other party interested in the said compromise or in any alleged breach as defendants.

4. In R.D. Madiyasa learned counsel for the applicant challenged the alleged order mainly on the ground that the compromise or agreement on the basis of which the writ before the respondent is being challenged was itself not validly executed or concluded. The respondent contended under O. 22 R. 3 of the Code P.C. was not complied with as the parties did not subsequently sign an affidavit under affidavit. It was urged that even if a compromise may be binding on the parties it must be a writing and signed by them. In the present case, the applicant who was a party to the suit had subsequently challenged the agreement and consequently the respondent could not be taken to be binding on the applicant. Thus being so, it was urged, the court below could not validly appoint a receiver as the purported agreement under the agreement stated have been concluded between the parties.

5. Having heard learned counsel for the parties, I find no substance in the reasons. In the first place, the respondent order has been regularly passed in the independent exercise of the Court's powers under O. 22, R. 3 of the Code P.C. has an implementation of an agreement stated to have been concluded between the parties before. This is clear from a brief perusal of the order and indeed, it has not been seriously disputed by the learned counsel for the applicant. The order appointing interim receiver is being passed in view of the agreement arrived at between the parties. A certified copy of the agreement has been supplied to the Court by the applicant. The agreement is in the shape of what appears to be a record of the statements made before the court below as contemplated by the Explanation added by the Allahabad High Court to Order XXII, Rule 3 which states that the respondent, agreement and compromise include a joint statement of the parties concerned or their counsel recorded by the court and the respondent, agreement includes a statement of the plaintiff or his counsel recorded by the court. A perusal of the statement of the parties recorded by the court below leaves no room for doubt that it provided that the court shall not appoint a receiver for the suit unless passed off a finding of

guilt of agreement reached by the parties. The agreement specifically empowered the interim appointment of receiver and by the respondent under the writ has done nothing less nor more than what it was lawfully empowered by the parties to do.

6. It is apparent that the interim receiver having been appointed specifically in terms of the statement recorded by the court below is cannot be challenged on the ground of the parties' difficulty, the statements of the parties showing that they have reached a settlement for the appointment of an interim receiver and disposal of the suit itself. The respondent order appointing interim receiver is simply a consequential order, the final order being one which the court below passed in terms of Order XXII, Rule 3 read with the Explanation added thereto by the Allahabad High Court.

7. Faced with the above difficulty, the Madiyasa learned counsel challenge the validity of the order passed by the court below according to the statements of the parties. It was urged that the said order cannot be sustained, firstly because a compromise under Order XXII, Rule 3 has to be in a writing, and secondly because the order does not bear the signature of the applicant.

8. Having given the submissions a careful consideration, I find it difficult to accept it. Order 22, Rule 3 of the Code as drafted provides that an agreement or compromise has to be in writing and signed by the parties. Where, therefore, the parties before the court an agreement or compromise on the basis that the suit be recorded and a decree be passed or a settlement is have usually to be in a writing and signed by the parties. But the Explanation added by the Allahabad High Court to O. XXII, Rule 3 does away with the requirement by necessary implication to provide.

**Explanation** – The respondent, agreement and compromise include a joint statement of the parties concerned or their counsel recorded by the Court, and the respondent, agreement includes a statement of the plaintiff or his counsel recorded by the Court.<sup>2</sup>

The Explanation requires the agreement and compromise with a joint statement of the parties concerned or their counsel as recorded by the

joint and the separate statements with a statement of the plaintiff or his counsel recorded by the Court. It is apparent that the provisions under Explanation relating to joint statement of the parties for agreement and compromise essentially obviates the requirement under O-12 and O-13 either agreement or compromise take in writing signed by the parties. But the joint statement recorded by the Court and merely the Legislature would not and the court expects that an order passed by a court should be signed also by the parties. Explanation to O-12 & 13 notified by the Allahabad High Court does not speak of the statement of the parties but a joint statement of the parties concerned recorded by the court.

9. I am, therefore, clearly of the opinion that reading O-12 & 13 together with the Explanation added by the Court cannot be rightly construed that joint statement of the parties need not be signed by the order of the Court recording the joint statement of the parties and thus, recorded, the same cannot be considered valid under O-12 & 13.

10. Further the court below as an order recording the statement has noted as follows:-

When the parties read over the statement and asked to sign the same and get duly signed, because Sr. Advocate Shrivastava did not do so, the statement was read over by the court.

Appended below the joint statement recorded by the court below are the signatures of all the parties to the suit or their counsel except that of the applicant Sri Ritesh Shankar.

11. Now O-12 & 13 would require an explicit authority for withdrawing a plea that an adjournment has taken place or alleged to attend that where it is alleged by one party and denied by the other that an adjournment or withdrawal has been allowed at, the Court shall decide the question but no adjournment shall be granted for the purpose of deciding the question unless the Court for reasons to be recorded in the order is to grant such adjournment.

12. It is therefore, the applicant Sri Ritesh Shankar felt that the Court had not correctly recorded his statement or plea of the other parties, he could have raised an objection then and there, but, however, did not choose to

challenge the order passed by the court below recording the joint statement of the parties and preferred to wait, may, time passed again. Further an only-filer applicant has challenged the constitutionality of the order passed by the court below recording the joint statement of the parties before the court below stating even in the Court earlier on the grounds of constitution as the affidavit filed in support of the application that the applicant challenged the correctness or accuracy of the statement recorded by the court below. The objection raised in the memorandum by the applicant before the court is clearly that that the agreement had not been signed by the applicant.

13. That being so, the Court is entitled to assume that the court below correctly recorded the statement of the parties including that of the applicant. Having agreed to the statement of the answer given by the applicant cannot be heard or treated as a civil revision that the order appointing the answer given by the court below should be set aside because the formalities contemplated under O-12 & 13 were according to the applicant, not strictly complied with by the court below.

14. Lastly Sri Shrivastava submitted that the agreement or compromise is not in accordance with the Scheme of Administration of the case. It is not required to maintain the substance of the stage. Such an objection ought appropriately to have been raised before the court below itself. If it is correct that the parties have reached a settlement for the disposal of the suit on a particular matter as recorded by the court below I do not think it ought to be open to the applicant to raise an objection of this kind in a revision under Section 147 of the Code of Civil Procedure. None of the parties in the suit or the revision has questioned the validity of the stipulations. All the parties to the suit are willing to abide by the agreement reached between them before the court below. I am hence not prepared to disturb that arrangement as the manner of a, free settlement.

15. In the result, the revision fails and is dismissed with costs.

For the respondent,

## FIRs AIR 1, 3, 399

by P. MATHEW, J.

*Rajendra Singh and others: Appellants v. State of U. P. Respondents*

Criminal Appeal Nos. 2614 of 1974 (D. 1) & 174 (1979)

(A) Criminal P.C. (C of 1974), S. 106 — Joint trial — Diversity — Diversity in different houses constituted of one and same town or village persons, within small periphery during period of one hour — Inference of absence in fact as many houses within or about distance as possible — Joint trial of accused as such case was justified. (Firm Code (M of 1980), S. 294) (Para 10)

(B) Firm Code (M of 1980), S. 294 — Diversity — No discrimination F.I.R. — Direct and definite evidence as to recovery, arrest and participation of accused as theory — Witnesses having no enemy with accused persons in any relationship with accused — Testimony of such witnesses cannot be discarded — Character of accused under S. 294 built was proper. (Firm Code (M of 1980), S. 2) (Para 10-15)

Cases Related Chronological Form  
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1974 Cr. L.J. 194 A.B. 1975 SC 21 17  
AIR 1967 Tripara 47 1967 Cr. L.J. 1028 17  
AIR 1974 SC 411 1974 Cr. L.J. 102 19

Attol Govt. Advocate M. A. Ghoshal and  
N. S. Singh for Appellants; B. P. Gupta, S. N.  
Mallik and Jagan Kishor for Respondents

**REQUIREMENT** — No discrimination between trial additional Sessions Judge, Allahabad by two order dated 24-7-79 convicted the two appellants of the case under S. 294, I.P.C. and sentenced each one of them to 10 years B. 1. It is against this order that the present appeal has been filed.

2. On the night between 11/11/1979 at about midnight Rajendra Das, complainant and members of his family were sleeping inside

their house in village Bagh in Chaur Sahib village, a sub-town in village Bagh and had fallen and police constable Arjun Singh Dharwal. One of the sons of the complainant namely Ravindra Nath was sleeping in the house on the roof of the house. There was a lamp lighted in the house. A Const. Gopal Ram had been kind in the house of the complainant, a neighbour named Shri Ram and a lamp was lighted there. The complainant heard some noise and got up. He found some dozens burning torch light on the roof of his house. Simultaneously he heard a cry of Ravindra Nath from the roof. He was crying for help. The screams varied being Ram Das son of the complainant and the complainant himself tried to go up the stairs but there was interference being by the neighbours and thus they were prevented from going up. They however, stood over from the place they were at and the villagers — Rajendra, Ram Babu, Sita Ram, Mohan Lal, Ram Shankar, Ram Bhai, Bhai Lal, Kewar Lal, Shri Ram, Shri Deyal, Ram Bahi, Mohan, Ram Singh and others were arrested. They all came armed with lathis and lighting these torches. Hundreds of Ram were living in those of the house of the Ram, near the neighbourhood of the house of the complainant. Ram Das put fire to the main and also provided sufficient light. When the presence of the villagers became strong the torches that were used were after having shown them in the neighbourhood. It was, thus, the moment when that Bala Lal had gone to another house that which had been attacked near his house and that had also provided sufficient light. The entire incident took about one hour to complete. There were 10 to 12 dozens who were variously armed with lathis, iron pipes, khatas, spears, kullars and some of them were motivated by the complainant and other witnesses in the light of the spot. Amongst them, Rajendra, Ram Arjun, Shri Ram and Jadhav, Shyam were named as the P.I.R. Nothing was heard from the house of the complainant. The neighbouring houses of Rajendra, Shri Ram, Shri Ram, Shri Ram, Lal, Ram Shankar, Ram Babu and Deyal, Ram were looted. As a result of the firing by the dozens, Ravindra Nath and Rajendra sustained gun injury separately. Shri Ram (Sham) wife of late Ram sustained a lathis injury. Ravindra Nath's condition was primitive. Rajendra Das got the P.I.R. recorded

\*Aggravated under of Section 309, 3rd A.M. Det. 4-3-3. Revised D' 27-1-1979



had tried to commit dacoity at the house of the complainant also after they had committed the murder of the complainant's son, they perhaps did not take courage to loot the property there too they continued looting the property at the neighbouring houses. Kamande said one of the complainants independently received gas shot injuries as a result of which he died. A further confirmation of the District Judge's finding that there is no evidence that the death could have been a result of the firing at the time of the commission of the dacoity. There is also no medical evidence to show that Kamande Kumar and Son, Son Shree, wife of Son Shree Ram also sustained injuries. The former are result of the disregard for the laws as a result of which later. When the investigating officer reached the spot he not only recovered bloodstained marks but also a golden ring. The recovery was signed by Kamande again. He also recovered from the spot from two places where at home Kamande D.W. 1 (B) was placed during the commission whether that a dacoity was perpetrated in the district town last place as alleged by the prosecution. That is also the testimony of D.W. 2 (Son Ram). Therefore, it is now established beyond doubt that dacoity did take place in which about 9 houses were looted by the dacoits and persons were murdered and two injured.

It Again a half-hearted argument has been advanced by the learned counsel for the appellants that the evidence shows that the dacoity was committed in more than three hundred and sixteen was one of 9 dacoits and son of one and a girl and was not permissible under the law. The learned trial Court has dealt with this matter in some detail. It is noted that the dacoits were committed in the course of the same transactions the case will squarely fall within the four corners of § 136 Cr.P.C. which does that it is not necessary to consider whether or when the same transactions were offences than one are committed by the same persons. It may be charged with and used as one trial for every such offence. In the present case the same evidence on record is to the effect that simultaneously dacoits were committed in all the 9 houses and the firing was being started to loot the marks of different houses and a way of settlements. There is evidence to show that the dacoits were standing in the roofs of different houses. From firing, which

resulted in the death of Kamande Nath, was made from the roof of Kamande. There is also evidence to the effect that during the course of the dacoity the dacoits were committing the murders first with taking place and when their complaint to hurry up at the village, had started to commit persons. In all 12 to 13 things were made. Looking in different houses was going on at the same time. From the testimony of Kamande Kumar D.W. 1 it is apparent that he emerged from his house while the firing was continuing. He tried to run to safety and as that provision he was injured. Similarly, Sanyal Lal's testimony is that he saw two of the dacoits armed with guns, two with money made pouch and the remaining with spears, knives and axes and while they looted the houses, currency notes and gold, they also looted silver things, weighing 10 to 12 lbs. Similarly, his brother Shyam Lal shows was also looted and during the course of dacoity Kamande Nath was killed and Kamande Kumar was injured. There is the testimony of Shyam Lal that the dacoits were threatening the village that if they came out of their houses they will be shot dead. This threat was being given by them that were standing in different roofs. He that the door of a house broken open by means. Simultaneously the houses of Son Ram and Gopal Ram were also looted. The dacoits were entering in order to make firing. According to Ram Shankar, the dacoits looted four boxes of Thermal Light, which had been given by him for the purpose of sewing and 30 pieces of cloth which were used for a bundle containing some Ram Shankar. Later he told and a man in this testimony that Kamande Nath was murdered and Kamande Kumar and Son Ram's wife sustained injuries. There is also evidence to show that when Son Ram's wife Son Shree Shree used to intervene, she was given a beating with Gandhi's cottons and that that clear from the many evidence on record that the dacoity at different houses was committed in one and the same time in the single process within a small temporary during a period of one hour and the purpose and intention of the dacoits was to loot as many houses within a short a duration as possible. The main branch of dacoity was busy for about one hour more going Chandi, looting things with their weapons and some others looting the property from different houses. Continuity of process between the houses



accorded to the depositions submitted. There is a clear endeavour to show that the criminal acts that were done were not isolated but were inspired by integrity of persons and will be deemed to have been committed in concert as connected together as to form the same transaction. Therefore, the plea that was rejected and dismissed suffer from repugnancy.

12. It is argued that there was delay in lodging the F.I.R. This occurrence took place at about midnight and the F.I.R. was lodged at 11.30 A.M. the next morning in a Station of Police. It should not be forgotten that the complainant is one that very seriously injured and there were two other injured persons. Arrangements for a bullock cart had to be made and with the mental make-up of the villagers who were at a state of tension and fear on account of fact like number witnesses in the village not inclined to come, it is very natural that they should have waited for the Thana with some delay. The F.I.R. was lodged at the village and then taken to the Thana. The learned Court below dismissed the testimony of Bhatnagar when he says that he recorded the report on 13.1.78 at 10.00 in the custody of the Investigating Officer at the Thana itself. No such suggestion was given to the Investigating Officer and Bhatnagar was telling what he said so. He even went to the extent of saying that part of the F.I.R. was as to be forwarding him during a case memorandum he had to change this stand. It appears that he was taking with the defence in order to discredit the prosecutory story. Private case evidence on record is so clear that no oral prosecution was conveyed to the Thana regarding the commission of the offence and actually a merely the F.I.R. whereby which was handed over and on the basis of which the case was registered. In my opinion, the circumstances of the case go to show that there was no delay in the lodging of the F.I.R.

13. There is also some suggestion regarding the absence of the light on the spot. It would be noted that the Karbi was burnt and there was very little or no the corner of the witness saw any ignited bulb connected with the Choker Gas Plant in the house of one of the witnesses. Now so far as the nature and content of the witness as concerned, there is definite and direct evidence of the witnesses on record and there is no reason why it should be

disputed. As the witness Karbi was burnt and evidence definite established as to what that he put fire on Karbi head near his house having testified he did so after the discovery was over. This is a very silly statement. Nobody can expect that the fire will be put to Karbi head immediately without any purpose after the discovery had recorded. In order to show that Karbi was only put in this when the starting was in progress. So far as the other Karbi head is concerned, there is definite evidence to show that it was during the course of the burning that the fire was put to it. As regards the bulb, it is not disputed that a Choker Gas Plant is fixed at the house of Bhatnagar. Bhatnagar admits the fact and further states that F.I.R. did not used to put light off. There appears to be no justification for the same. When the bulb has been fixed, the purpose was to keep it lighted during the night and therefore when the witness say that this bulb was lighted even when the occurrence took place, they have to be believed.

14. The next witness argument is that the appellants are all known persons and there is no evidence to show that they had any previous to conceal their identity and hence it has to be held that they did not take part in the occurrence. This argument is in respect of Bijendra Singh, Shantam, Ram Achin and Ramesh Shantam. So far as Prasad concerned, he has not been named in the F.I.R. The case against him depends upon the circumstantial evidence and it is nobody's case that he was known from before, although the defence has tried to connect him also with other accused persons and one Chander Lal. It is true that generally we do not expect known persons from the neighbourhood to go and commit damage with the house of known persons without trying to conceal their faces in an open manner but this general rule of conduct is not universally applicable in isolated every case. There may be cases in which known persons do commit between offences without concealing their identity.

15. The decision of the Supreme Court in the case of Ram Bijendra Singh v. State of U.P. AIR 1974 SC, 641 does not lay down a general principle that known persons would not commit offence without taking precautions to conceal their identity. If this conclusion of the defence is upheld, then any criminal can

such common doctrine and emerge on the ground that by not attending the classes before commencing the classes. Even one will have to depend upon its own facts and circumstances. This was the view taken in the case of *Prasad Choud v. State AIR 1968 Tripara 12*. There is no similar case of *Chander Bhan v. State AIR Cr LJ 191-141* in which the following observations are of relevance:—

For one of them the names already known persons were arrested who would naturally not go to classes. Surely without taking care of converting their facts given in Part one there is no rule that has rule that even persons would not go to classes. The court without taking care of converting the facts independently upon the suppression of a person. There can be isolated instances. When a known person is desperate and very much moved he might reconsideration without taking the usual procedure of conversion, the fact it was so held by the Supreme Court in the case of *Goverdhan Sarda v. State AIR 1973 Cr LJ 170*.

16. In *State* case the High Court had held that the names were both arrested and persons and still after applying the standard of justice and then after scrutiny the High Court found that a notice of the witnesses to be reliable and continued the appeal.

The Supreme Court observed:—

Thus being the position however reliable it might appear to be, only for the appellant to have participated in the conduct a modification get over the evidence of the having been identified and named by Indians and the other witnesses stands satisfactorily after the evidence. The only explanation about the High Court was on the part of the appellant who completely towards Indian giving the defence of them which made that witness say reason which he would have otherwise taken when participating in such an offence.

17. From the answer for known persons which just as a person without conceding their identity as mentioned in the case of *Chander Bhan* under Cr LJ 191-141 (supra) can not be a simple and complete. There may be other reasons in relation to the nature of desperate namely e.g. the belief in the need of

the subjects that they might not be known to the witnesses and similar other reasons. So far as the need of a subject is concerned as such cannot be a subject of even a plea in defence. Why a certain man cannot do duty only upon time as a plea where there is a National of the Government knows the matter that cannot be explained by this evidence. The absence of the documents is the explanation for the performance of duty without taking precautions. A court is held as a matter of rule that they could not have known and due diligence. The answer is that all have to be looked into with precision and reason of a case established on the evidence to reveal the nature of the fact, part in the duty under the circumstances and not only agree but also reasonably disposed towards the compliance and other witnesses, etc., that the witnesses were present. It is in the light of this legal position that facts as well as evidence of the evidence of the witnesses against the named persons and persons.

18. The apprehension of some who have been named in the F.I.R. in *Rajendra Singh* case. *State v. Rajendra Singh and Others* AIR 1973 Cr LJ 170. There is no documentary evidence on record with *State* (AIR 1973 Cr LJ 170) given by *Chander Bhan* (AIR 1973 Cr LJ 170) that the names of *Prasad Choud* (AIR 1968 Tripara 12) were lodged by *Chander Bhan* (AIR 1973 Cr LJ 170) under No. 104 and 105 F.I.R. against *Rajendra Singh* and *Prasad Choud*. The copies of these F.I.Rs. have not been produced. *Rajendra Singh* denies the fact of conversion mentioned in these F.I.Rs. In one particular report in which *Rajendra Singh* named *Prasad Choud* one of the sons of *Rajendra Singh* as mentioned it is established that *Prasad Choud* was on Army duty on 15-1-1973 and hence the report was lodged. *Chander Lal* it appears in the year 1974 had started proceedings under Sec. 424 F.I.R. against *State* and *State* in the district court at *Prasad Choud* in the year 1973 and it shows that *Prasad Choud* had a son named *Chander Lal* and it was disposed of in *Chander Lal* against *State*. Therefore, we say that there was some reason because *Chander Lal* (AIR 1973 Cr LJ 170) and *Prasad Choud* (AIR 1968 Tripara 12) were not members of the state. But as far as the prosecution witnesses other than *Rajendra Singh* and *Prasad Choud* and *State*







deposited over again at the auction should deposited under S. 33 of the Act. This could not be the intention of the Legislature in enacting the provision of O. L. R. S. C.F.C. 1 for object thereof was to ensure the deposit of the rent to the landlord and not merely to provide a security against the tenant. It appears to me that it would be contrary to the object of the rule if the requirement as to rent as to be made at the time of the deposit was so strictly to be construed as to require the proceedings at the auction to be done and not the auction proceeding under S. 33 of the Act.

7. It will also be apparent from the facts of the instant case that to accept rent, the right of the tenant under S. 33 of the Act, and give the amount to the Court of Small Causes. That rule was rendered void by the Act, especially in its necessary application to any other statutory provision. The provision of O. L. R. S. C.F.C. cannot be interpreted to require, or for necessary implication result operation of the provision of S. 33 of the Act. The result would be that from the time of the filing of a suit by the tenant against the tenant, there would be two courts operating the same, namely, order to deposit the amount under S. 33 of the Act and the deposit to the Court where the amount was to be paid under O. L. R. S. C.F.C. This amount necessarily belongs to the tenant and if he is not at liberty to use it there, he does not commit any illegality or wrongness. He is already entitled to the benefit of the deposit, made under S. 33 of the Act. His only duty during the period prior to the payment of the rent for payment, but also during the subsequent period.

8. Learned counsel for the plaintiff contended that the deposit under S. 33 of the Act was not lawful because the landlord had not refused to accept the rent which, unless, had been considered as such. He further contended that the tenant had not pay rent-tax, which was liable to be paid as rent, and in that case also the amount deposited was unlawful.

9. The pleading of the tenant in these respects was that he had received the amount in the first instance which the landlord refused and thereafter he sent the rent by money order, which upon the landlord refused and, therefore, he deposited the rent under S. 33 of the Act. It was also urged that by agreement

between the parties, water tax was already included in the agreed monthly rent of Rs. 10/-

10. The important aspect, for the purpose of the rent payment, is that these points had not been raised, either before the trial Court or before the appellate Court, and cannot be permitted to be raised for the first time at the rent payment. The matter rests upon findings of fact which can be reviewed only after both the parties had entered evidence and the same is assessed and appreciated for the purpose. It is a different matter that on the basis of the case these points would still be available to the plaintiff to be raised in order to show that the Opposite party No. 1 had made a default in payment of rent as contemplated by S. 33 of the Act, and that he was to be liable to deposit the amount of rent under S. 33 of the Act and also pay as much of the rent as was at the time of the suit. There is no doubt that if these points had been raised before the trial Court, they would have been considered and decided on the basis of evidence of both the parties before striking off the defence. On the face of it, these points had not been raised for the purpose they cannot be permitted to be raised at the rent payment.

11. In view of what has been stated above that no question of law here be admitted and a summary is issued.

Plaintiff dismissed.

FM-ALL L. J. 308  
(LAKSHMI DEVI)  
R. A. MEERA J.

Ajayg Mohandas and another, Appellants  
v. Anandabai and others, Opposite Parties.

Criminal Case No. 77 of 1955 (D. 3-5-1955)

Criminal P.C. 42 of 1946, Sec. 124, 413(a) =  
Restoration of amount of maintenance =  
Property of husband attached and kept with  
regularity = Separation failing to produce  
property attached for sale = Direction by  
Magistrate to attach property of regularity =  
Illegal. (Para 7)

S. M. Tondal and S. M. Hossain, for Appellants  
Govt. Advocate, for Opposite Parties.

RECEIVED AT THE COURT OF APPEALS

**ORDER.** — This revenue writ issued by the order of 28.1.1980 passed by S.C. P. Singh, Second Additional Sessions Judge, Coimbatore, allowing execution of Amavallath's Superior and setting aside the order of 19.3.1979 passed by S.A. M. Shastriya, First Additional Magistrate, Coimbatore, requiring Amavallath's apprehension S.O.79 for execution of the order of attachment of his property.

2. The facts briefly are as follows:—

Amey Mohammad and Kameer Shafiq Nisa, the young son and daughter of Ismail Mohammad O.P. No.2 were joined maintenance order 3.12.1978 Cr.P.C. Serial No.10000, the latter failed to comply with the directions of the Court without sufficient cause. The learned Magistrate thereupon issued a warrant for arresting the accused during the manner provided for arresting him as provided under 121(a)(ii) Cr.P.C. and movable property of Ismail Mohammad was attached and given to the custody of Amavallath. It is apparent that subsequently Amavallath failed to produce the attached movable property for sale when called upon to do so. The learned Magistrate thereupon, directed that the amount be realised by the attachment of the property belonging to the Superior Amavallath. An application moved by Amavallath for setting aside the aforesaid order of attachment and sale of her property was rejected by the learned Magistrate but a revision of the learned Sessions Judge on appeal the order passed by the learned Magistrate for attachment and sale of Amavallath's property. The appeal to viz. Amey Mohammad and Ka Shafiq Nisa, who are arrested for the maintenance, have petitioned the revision against the aforesaid order of the Sessions Judge.

3. I have heard the learned counsel for both the parties.

4. The first date a direction was issued by the learned Magistrate execution of the process under 3.12.1978 of the Cr.P.C. for payment of maintenance to the mother by their father Ismail Mohammad and also the first directed, Mohammad failed to comply with the order and directions of the Court whereupon his movable property was attached for realisation and are established from the material on the record, Amavallath contested the proceedings before the Court before us

on the ground that the movable property was not actually given to her custody but both the Courts below have regarded the same as on the ground that the Magistrate's order has reversed. The learned Sessions Judge has allowed the revision and set aside the order of the Magistrate on the ground that the Magistrate's order did not make the Superior liable for production of the attached property, and as soon as the Magistrate's order is set aside, the revision must be allowed, attachment of the property belonging to Amavallath.

5. The learned counsel for the respondents has not been able to state in any provision under the Code of the Criminal Procedure or any other law where by the warrant may be revised to attachment and sale of the property belonging to Amavallath under the circumstances stated above.

6. Section 125 sub-4, (a) provides that, if any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for arresting the accused during the manner provided for arresting him, and may sentence such person for the whole or any part of each month a fine amounting to not more than the amount of the interest, or imprisonment for a term which may extend to one month or such payment as may be made for the amount of maintenance may be retained as a fine. Section 421 of the Cr.P.C. authorises a Magistrate to give a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender for the recovery of a fine. In the instant case a warrant appears to have been issued under 5.421(a) of the Code and in execution thereof the movable property of Ismail Mohammad appears to have been attached. Sub-sec. (2) of 5.421 of the Code provides that the State Government may make rules for the summary attachment of any claim that may be made in respect of the property attached under sub-sec. (1)(a) and it is the duty of the Court in such cases to hold a proper inquiry into the title of the claimant. The learned Magistrate, it is apparent, has not followed any summary procedure which may have been laid down by the State Government in exercise of its powers under sub-sec. (2) of 5.421 of the Code. The learned counsel for both the parties have not been able to justify









narrow and weak as compared to the grounds of detention forwarded to the prisoner. Ground No. 1 relates to an epidemic allegation, here taken place on 6-9 1982 while ground No. 2 relates to an outbreak of TB in 1982 and ground No. 3 refers to an outbreak in 6-8 1982. Ground No. 4 relates to an outbreak of this July 1983 while ground No. 5 relates to an outbreak alleged to have taken place on July 12 1984. One of the five grounds has grounds relate to the epidemic of 1982 and 1983 which are quite old and may if the prisoner's detention was necessary as to its purpose have been prejudicial to public order. For the purpose of maintaining public order we would expect that the District Magistrate would have made an order of detention as early as 1982 or 1983 but the order of detention was passed on August 29 1984. There was another delay in making the detention order against the prisoner on the grounds Nos. 1 to 4. It would be reasonable to assume that the District Magistrate of Salsburgh, if he was properly and reasonably satisfied that it was necessary to detain the prisoner to prevent him from being in any manner prejudicial to maintenance of public order would have acted with greater promptitude in making his order of detention and the prisoner would not have been allowed to remain at large for such a long period of time for carrying on the activities which are alleged to be prejudicial to public order. For all these reasons the prisoner's detention on grounds Nos. 1 to 4 is not sustainable.

3. As regards ground No. 5 it relates to an outbreak which is alleged to have taken place on 12/7 1984. The prisoner is alleged to have kidnapped Yusef Yusef along with his associate from the remand of the Court of the Chief Justice Magistrate Salsburgh. The prisoner is alleged to have used force in taking to say Yusef Yusef to prison. As a result of the incident the main Court compound was gripped with terror and fear. A report of this incident was lodged in the police station and during investigation On Singh warned the police that the prisoner was involved with violence. This incident relates to a single act of kidnapping of an individual by the prisoner and his associate. By its own nature it has no tendency to disturb the public peace and tranquillity. A robbery incident directed against a particular individual even if it may cause some temporarily in the locality

cannot be held to affect public order. No material has been placed before the Court to show that this incident of kidnapping of Yusef Yusef leads to persecution or disturb the public life of the community. The one claim on the papers that the prisoner's detention on ground No. 5 is not sustainable is that it is alleged to have been commenced by the prisoner that was contrary to public order. Internal a release to him and order.

4. The detention order of 29-8-1984 was made by the District Magistrate on the basis of a police report. The Sub-Inspector of Police submitted a detailed report to the District Magistrate through the Senior Supt. Officer of Police on 28/8/1984. The Senior Superintendent of Police forwarded the Sub-Inspector's report to the District Magistrate and on 27th Aug. 1984 the District Magistrate made the detention order. The material contained in the report of the Sub-Inspector was incorporated in the grounds by the District Magistrate on the basis of which he made the order. On a comparison of the Sub-Inspector's report and the grounds served on the prisoner along with the detention order show that the District Magistrate did not apply his mind, instead he mechanically reproduced the police report verbatim in the grounds. The language used in the grounds of detention is a verbatim reproduction of the police report. It shows similar verbiage as the Supreme Court in *Isaiah v. State of Jammu & Kashmir*, AIR 1957 422. We hold the detention order illegal on the ground that the detention order was reproduction of the report made by the police. In the meantime that the District Magistrate reproduced the proposal made by the Sub-Inspector verbatim which makes the grounds clear that he did not apply his mind and passed the order mechanically. For this reason the detention order is invalid.

5. The detention order was made by the District Magistrate on 28th Aug. 1984 and it was served on him on July 1 1985 almost after almost months. If it was necessary to detain him, the authorities concerned should have acted with promptitude in serving the order and arresting the prisoner but the authorities committed another delay in the service of the order on the prisoner. The undue delay in the actual arrest that the detention order was made is sufficient to state



1. The first proviso to S 46 of the Act by Act 1985 Amendment referred to in the last paragraph is a safeguard taken on the score of temporary stage carriage permits along the roads, viz. of an application for the grant of a permanent stage-carriage permit made under S 46(1b) of the Act. It is observed in paragraph 3 of Act No. 46 of 1985 Parliament (repealed) the type of the said proviso and in S 46(2) it has provided that a R.T.A. is empowered to grant temporary permits on a particular route if that Authority has been authorised from passing permanent permits by any order passed by any competent Court or Authority. It is also provided that the number of temporary permits to be granted shall not exceed the number of permits which the Transport Authority could have granted but for the order of suspension issued by the Competent Authority or Court. The other safeguard provided by the Legislature is that in the event an existing permit has order been cancelled or suspended a temporary permit can be granted in fill in the vacancy created by such a suspension or cancellation of a permit. To put it differently a R.T.A. has full jurisdiction to grant temporary permits during pendency of applications for the grant of permanent stage carriage permits if any of the said conditions specified in subsec. (2) exist.

4. It is now well settled that an application for the grant of a permanent stage carriage permit on a route can be refused only if the R.T.A. has, under statutory powers under S 46(a) of the Act, recognised that route to being a local one. If the R.T.A. has not exercised its powers with respect to a route under S 46(a) then the question of an application for a permanent permit being refused and the same remaining pending before the R.T.A. disappears. Therefore if the Transport Authority has so far not exercised its powers under S 46(a) of the Act with respect to the route, it shall be open to it to grant temporary permits on the route to meet the requirements of the standing permit.

5. It is again made clear that if there exists any vacancy on the route as a consequence of the action taken by the Transport Authority under S 46(2) of the Act and applications/applications for the grant of permanent permits are pending or are pending

before the Transport Authority and none of the vacancies as contemplated in S 46(2) of the Act mentioned the Transport Authority shall allow them going about in the regulated order of the Applicant Transport.

6. The permits were disposed of finally in the light of the observations made above.  
Order accordingly.

1996 JUL 1 1 105

A. RAJENDRA V. K. KHANNA J.

Sir Ravi Pravegar, Pravegar & Pravegar  
Tax Officer, Gurugrah, Rajasthan

Writ Pet. No. 466 of 1995, D. 7/1/96.

[4] **Motor Vehicle Act (1980), S 1(p) — "Stage carriage"** — **Private vehicle carrying more than ten passengers for hire or reward — It is a stage carriage.**

**Definition of stage-carriage, Section 1(p)** would refer to motor as well as electric bus through a private vehicle is found carrying more than ten passengers for hire or reward even though it is not required to carry carriage with the motor vehicle certification. The definition of stage carriage uses the words carrying or rewarded by carry. Any vehicle which is adapted to carry besides the driver six passengers for hire or reward would be regarded as stage carriage unless exempted. Similarly, a vehicle which is carrying more than ten passengers for hire or reward would also come within the definition of stage carriage. AIR 1979 SC 340 (overruling) (Para 4).

[5] **Constitution of India, Art. 226 — Writ petition — Mandamus — Statutory remedy of appeal, not exhausted by petitioner — Petitioner not unreasonable in absence of good reason.**

Where there is a statutory remedy, the petitioner should normally exhaust the remedy before approaching the High Court under Art. 226. There may be exceptional cases where the Court may interfere even though there is an alternative remedy and in this test focus should be that such cases are rare and there must be good reason thereon before the Court is asked to interfere. (Para 14).

REPRODUCED BY THE DPM

**Civil Reformed Chronological Form**  
L2004/309 From No. 204 of 1983 Civil Form  
Book 1. Passenger Tax Officer's Manual 4  
4.35 1976 SC 341.

A. K. Varma and J. P. Srinivasan for  
Petitioner, Chief Standing Counsel for  
Respondent.

A **REMARK 1** is: The next petition has been filed by Justice Tinnon under Art. 22 of the Constitution challenging imposition of Passenger Tax on the long rule under the 1983 Act. The stand adopted by the petitioner is that he is a private long vehicle and a single carriage and consequently exempt from Passenger Tax under the provisions of S.P. Murali Gopal Varma & Kar Adhikary, 1983. The stand taken by the respondent Passenger Tax Officer is that the vehicle in question was carrying eleven persons when it was stopped and hence under S. 4 of the Act it was not exempt from the passenger tax. The respondent also said that in that case, there appeared to contain the matter and on the basis of the material on the record in the order in *Uthappa*, 1983 (Appellate) so the way petition was passed by the Passenger Tax Officer imposing a fine of Rs. 1125. In *Passenger Tax* for January 1983 Rs. 380 in *Adhikary* Passenger Tax Rs. 100 in *Investment Charges* and Rs. 330 in *penalty*, as of Rs. 1570. He was also given 30 days time to pay up the amount received. The petitioner asked for a stay order which is ultimately provided under the provisions of S. 73 and has come up to the Court directly. The way petition was filed in the Court in 1983 Art. 110. We have heard learned counsel for the petitioner and respondent before the petition was filed under the Rules of the Court.

2. Mr. S. K. Varma, learned counsel for the petitioner, submitted the following facts, that the petitioner was not involved with a motor vehicle under S. 4 and hence he was not liable for the Passenger Tax Officer in the matter. Secondly, the vehicle in question was a long rule as a private vehicle and not a single carriage. Consequently there could be no imposition of passenger tax on the vehicle. Thirdly, there is no finding expressed by the Passenger Tax Officer that the vehicle was carrying passengers for hire or reward on the day it was detained and consequently the imposition of passenger tax was held as null.

Learned counsel also argued that the petitioner could only petition the delay and the order of the vehicle for overloading the bus under the Motor Vehicles Act 1930.

3. Learned Standing Counsel raised preliminary objections about the maintainability of the way petition. His submissions were twofold. Firstly, the petitioner had no alternative remedy as his statutory appeal and his right to have challenged the order before approaching the Court under Art. 22 of the Constitution. Secondly, if the petitioner had not moved any order under S. 4 of the Act, he would not have made an application to the Passenger Tax Officer for revoking it, in order which the officer was competent to recall and so such he should not have approached the Court without first exhausting the remedy. On the other hand, Standing Counsel argued that it is not necessary that a vehicle should be registered as a single carriage for the purpose of imposition of Passenger Tax. If the vehicle was such which came within the definition of single carriage in S. 2(g) of the Act it would be single carriage, notwithstanding the fact that it was not registered as single carriage. In the context he argued that a vehicle which was carrying more than six passengers for hire or reward would be deemed to be a single carriage and such a single carriage could be proceeded against for payment of Passenger Tax under the provisions of Motor Vehicle Act Adhikary, 1983. Relying on the argument that such a person would be liable for prosecuting the driver and the owner of the vehicle for overloading, the vehicle, and was the appropriate course open under S. 73. Learned Standing Counsel argued that these provisions were under the Motor Vehicles Act, whereas in the present case the proceedings were under the Act.

4. Then, learned counsel for the petitioner said that the way petition was filed was not in error of the procedure available to him. He would, therefore, not express any opinion on the matter, but would content to make a clear that the definition of single carriage as given in S. 2(g) of the Motor Vehicles Act would embrace within its fold a vehicle which, though a private vehicle, is

found carrying more than ten passengers for hire or reward is an offence and is punishable by a fine, contrary with the Motor Vehicle Act, 1930. The defendant is charged with carrying the vehicle carrying more than ten passengers for hire or reward which is alleged to carry passengers for hire or reward would be regarded as large carriage unless corrected. Similarly, a vehicle which is carrying more than ten passengers for hire or reward would also incur within the definition of large carriage. Defendant was made to the decision in the case of *Tax Officer v. Passenger Tax Officer* (1931) 10 T.R. 100 (P.C.) by learned counsel for the primary respondent that decision, in our opinion would not help the petitioner. In that case a private vehicle was found carrying employees of the Company to the work site and they were being charged a small amount. The Court observed that the Company vehicle was employed to carry its own workers it would not constitute carrying passengers for hire. In our opinion the above decision is clearly distinguishable. We have already observed that we do not propose to overrule open courts cases. We will therefore, accept the question to whether a motor was duly taxed on the petitioner or not, and whether the vehicle was carrying more than ten passengers, and whether it was being so done for hire or reward. All these are questions of facts which will be looked into and decided by the Passenger Tax Officer or the Appellate Authority.

1. We find the contention of the learned Standing Counsel regarding inadmissibility of the petition to be rejected. It is well settled by their Lordships of the Supreme Court that where there is a statutory remedy the petitioner should normally exhaust the remedy before approaching the High Court under Art. 226 of the Constitution. There may be exceptional cases where the Court may interfere even though there is an alternative remedy and a law not been enacted of the rule. Cases are rare and those must be good cases. Cases before the Court is asked to interfere. We do not find any good material showing our assistance and power under Art. 226 of the Constitution in the present case. Even if the period of time for making an application for setting aside the order on the ground that it is void was served, the appeal,

the petitioner would have to satisfy the court that it was a substantial right of the order to set aside such an application would be rejected. Passenger Tax Officer. In this case, the petitioner deposits his appeal, he may do so within a period of six or eight days from the date of obtaining a certified copy of the order.

2. Learned Counsel for the petitioner had stated a contention that several other persons were present making similar points had been overruled by the Court. This case was referred to by Mr. Justice (P.C.) of 1931 — *Passenger Tax Officer v. Passenger Tax Officer* (1931) 10 T.R. 100 (P.C.). The case petition was a tax case. The vehicle was charged for carrying 12 passengers and the matter was compromised, the driver by payment of Rs. 750. The contention was that the petitioner has applied to be prepared on an alternative case. The facts of that case are not similar to the present case. In that case, the matter had been served on the same content of the vehicle and the matter had been compromised by the driver which means that there was no contention that the vehicle was carrying more than ten passengers. Further, the admission of a new person by a friend of the Court does not constitute a ground for setting aside a decision unless it was proved. If the facts of the two cases persons are exactly the same and they raise common questions of law and facts the admission for hearing of a person will certainly have a persuasive value on the later Division Bench. However, the admission of a case is not binding on a subsequent court. As indicated above we are satisfied that the petitioner has two alternative remedies which he has not availed of and it is not proper that he should avail them before approaching the Court.

3. We therefore dismiss the writ petition with the observation that the petitioner will be entitled to file an application for revoking the order imposing passenger tax before Passenger Tax Officer within seven days of obtaining a certified copy of the order and may likewise approach, as an appeal, to the Appellate Authority against the order of the Passenger Tax Officer. We order accordingly. There will be no order as to costs.

For the respondent.

## 1986 ALL.L.J. 238

S.D. AGARWALA, J.

**Gauri Chandra, Petitioner v. The Third Additional District Judge Pabitra and others Respondents.**

Cs. (Writ) No. 1123 of 1981 D- 10 (1986).

1. G. P. Panthapuri Raj. Act (1947), Sec. 12-C = L. P. Gauri Sathia (Respondent of Election Order) (1981), Para 26 — Election process — Election is declared null and void — There cannot be a subject of challenge in election process.

Section 2 read with the provision of the L. P. Gauri Sathia (Respondent of Election Order) (1981) are a complete Code by themselves in the matter of preparation and maintenance of electoral roll; the events or the electoral roll, itself, does not form a subject of challenge in an election process that under S. 12-C Case law demands.

(Para 15)

File some other proceedings have wrongly included in the electoral roll of the Gauri Sathia, a specific remedy has been provided in a person aggrieved to challenge the said inclusion. The electoral roll has been given finality and the Civil Court has been debarred from interfering or adjudicating upon the question whether any persons are not included or be registered in an electoral roll for a Gauri Sathia.

(Para 15)

(B). G. P. Panthapuri Raj. Act (1947), S. 12 (3) (a) (i) — Election process composed of "process better to comply" — Failure of elected member to prove that his name was included in electoral roll of any other body — Cannot be a ground for challenging election under (B).

Only when there is a gross failure to act in accordance with the Act and the Rules by the Officer in whom the Legislature has cast a duty to conduct the elections then only the election can be challenged on the ground mentioned in (B). It is obvious (1) and (2) C.

(Para 29) (B)

Where there was no gross failure on the part of the officer concerned to follow the rules, no election was any alternative to that effect and the only allegation was that the elected member should not be elected and that his name was included in the electoral roll in an other body which is different for the same could not be a ground for challenging the election under S. 12-C (B) (a) (i). (Para 23)

Case Reported	Chronological Para.
418 (1975) SC 717	16
418 (1975) SC 746	17
418 (1975) SC 740	11
418 (1975) SC 750	26
418 (1975) SC 428	11
1985 All LJ 404	11 & 19 (B) 1 & All LJ 405

**S. V. Tripathi, for Petitioner; M. C. Mehta and Vaidyanath Gopal, for Respondents.**

**ORDER** — This is a petition under Art. 226 of the Constitution directed against the order dated 19th Sept. 1981 passed by Third Additional District Judge Pabitra in a revision under S. 12-C of the G. P. Panthapuri Raj. Act, 1947, arising under the election of the petitioner who was elected as President of the Gauri Sathia in Gauri No. 21 Pura Chaudhla Chaur, pargana and taluk Poonchpur, District Pabitra.

1. On 2nd June 1981, the petitioner was declared duly elected to the office of the President of the above mentioned Gauri Sathia defeating respondent No. 2 (a) Mohammad Mehta, respondent No. 2 (b) an election process before the Sub-Divisional Officer, Poonchpur Authority Poonchpur Pabitra under S. 12-C of the G. P. Panthapuri Raj. Act, 1947 (hereinafter referred to as the Act). The petition was filed on a number of grounds. One of the grounds stated by respondent No. 2 was that the petitioner's name was wrongly included in the electoral roll of the said Gauri Sathia and, for that reason, his nomination paper was invalid.

2. The petition was contested by the petitioner's by another elector (2nd July 1981) the Sub-Divisional Officer, Poonchpur Pabitra, dismissed the election process. The Poonchpur Authority held, inter alia, that no corrupt practice had adopted during the election. The other grounds stated by the respondent No. 2, challenging the election were also decided.



judges and the respondents by 2. The President Judicialists in particular held that the president's name, which appeared in the voters' list and that the election could not be challenged on that ground alone.

4. Agents of the German & French war, killed under 5. If Call of the Am before the Dangers, I have seen the better of the Perverted Authority, was challenged in two grounds, first, it was impossible under 12. If the person whose name appeared in the report of the Major, Paine, Paine, could not have been there in a manner in the government, then the report was made, he was not competent to conduct the election, and, secondly, that the person who was elected, was not elected, and that the person who was elected, was not elected.

8. The relevant court-appointed findings, recorded by the Prosecution Authority that no charge papers were submitted by the prisoner in reply to the respondent No 2. The criminal court however on the first occasion ruled by the respondent No 2 held that the prisoner was wrongly arrested in the street but because he was not entitled to be registered at the discretion of the Court taken concerned because his name was noted in the electoral roll pertaining to Ward No. 14 of Nagay Patana, Patana, and that he had failed to show that his name had been struck off from the said electoral roll. Having granted the finding, the respondent was then told that the prisoner was not entitled to a writ, the election of the Division and, as such, the result of the election was manifestly affected. After recording the finding, the election of the Prisoner was set aside by order dated 15th Sept. 1960 which has been quashed at the prayer of the prisoner as mentioned earlier.

4. Learned counsel for the promisor has urged that it was not open to the prescriptive Authority in the circumstances under S. 13 C of the Act to go behind the clerical roll and suggest that the question as to whether the promisor was lawfully admitted to the clerical roll of the Gao Sabinas or not. It was further urged by the learned counsel that under the provisions of S. 13 C of the Act, the objection of Purandor of a Gao Sabinas could not be challenged off the ground that the names of its members had been wrongly included on the

original roll of the Green Tables prepared under the guidance of the Jacksonville State Historical Museum for

7. In order to consider the four substances named in the learned comment for the presence of a substance in the human, the four substances must of the fact by virtue of which the determinants of the human body are concerned.

8. Section 7 of the Act provides that electoral rolls for an election shall be prepared in accordance with the provisions of the Act, under the supervision of the Returning Officer. It is to be noted that the Returning Officer is an official of the State Government, and the Government may designate or nominate in this behalf. The return further provides that the Returning Officer shall, prepare and publish, as a electoral roll in the manner provided, and upon its publication, it shall subject to any subsequent addition or modification made under or in accordance with the Act, be the electoral roll for the election. Section 13 of the Act provides that a person who has attained the age of 18 years and who is ordinarily a resident in the area of the constituency, shall be entitled to be represented in the electoral roll. Section 14 of the Act provides certain disqualifications for registration. Sub-section (1) which is relevant for the purposes of this writ, runs as follows:—

5(f) The portion shall be treated to be repurchased at the discount will for any Green Stock, if the name is not, and to the extent of all remaining accounts, membership, installed area, subscription of stock, and interest in stock that has been paid back off each discount will.

[illegible]

provision is unclear —

"[N]o one can cast doubt upon  
provisions—"

It is necessary to adjourn upon the  
question whether any provision is an essential  
component of the electoral roll for a *Quota*  
*Salto* or

the question the legality of any action  
taken by the under the authority of the Electoral  
Registration Officer or of any decision given  
by an appellate authority under rules 187 or  
any subordinate provision under the Act for the  
purpose of any such roll.

4. From an analysis of the various provisions  
of S. 7 of the Act, it is apparent that if  
the name of any person has been wrongly  
included in the electoral roll of the *Quota*  
*Salto*, a specific remedy has been provided  
in a petition approved to challenge the said  
electors. The electoral roll has been given  
finality and the Court cannot have deliberated  
that maintaining or adjournment upon the  
question whether any person or persons included  
in the registered or electoral roll for a *Quota*  
*Salto*.

10. Under S. 8(1) of the Act, the *Quota*  
*Salto* Electoral Registration Officer of Electoral  
Order 1978 has jurisdiction by the Governor  
of Uttar Pradesh. The Court says, down the  
number in which the electoral roll has in the  
proposed, Cl. 18(1) of the order provides that  
any person in the roll on the ground that he is  
not qualified or has been disqualified to be  
registered in such roll may apply to the  
Electoral Registration Officer for correction.  
The Order further contemplates that after all  
the objections to the electoral roll have been  
disposed of, the final electoral roll has to be  
published as provided in Cl. 10 of the  
Order. Cl. 17 of the Order lays down the  
manner in which an appeal can be filed from  
the decision of an Electoral Registration  
Officer. The right of appeal has been given  
under Section 18(2) of the Act.

11-A. On an analysis of the various  
provisions of the Act and the U. P. *Quota*  
*Salto* Electoral Registration Order 1978, it  
is clear that the provisions are a complete  
Code by themselves. Having done the manner  
in which electoral roll has to be prepared, the  
manner in which the final electoral roll can be  
challenged. Finally has also been given to the  
electoral roll. Whether the Act and the order pro-

vide complete Code or not. There is no doubt as  
to whether the validity of the electoral roll  
was of the persons in the electoral roll of  
the challenged is an election petition or not, it  
is apparent in various facts that the election  
of the persons has been challenged in its  
ground mentioned in S. 8(1) of the Act which  
provides that no provision for correction be  
accepted in the electoral roll for any *Quota*  
*Salto* if the name is entered in any electoral  
roll prepared by any authority. From Cl. 4  
of the Order (Provisional *Quota* *Salto* Electoral  
Registration Order 1978) it is apparent that the  
objection could have been raised by the  
registered No. 2 before the Electoral  
Registration Officer. He did not at that time  
take any objection to the name of the person  
being included in the electoral roll of the  
*Quota* *Salto* and under first time he raised an  
objection by means of an election petition  
under S. 10-C of the Act.

11. In *U. P. State Swamy v. U. P.*  
*State Swamy*, AIR 1962 SC 408, the dispute  
is related to the election to the *Provisional*  
under the provisions of the *Uttar Pradesh*  
*Provisional* and *Local Bodies Act, 1950* came  
up for consideration. In this case, the question  
arose as to whether or the name of any person  
included in the electoral roll was wrongly  
included, then was the said person be  
accepted as an election petition filed under  
the Act. The electoral roll in the said case had  
been prepared under the provisions of  
Registration of People Act, 1950 S. 10 of  
that Act from the publication of the said roll  
to persons the legality of any action taken by  
an under the authority of the Electoral  
Registration Officer. The Supreme Court in  
view of the provision that the roll was not  
acted under such a person be challenged by  
means of an election petition under the Act.  
A similar question arose in *Rajul Singh*  
*v. Rajul Singh*, AIR 1978 SC 308. The  
question whether it was open to a person to  
challenge the fact whether any person is or is  
not included in the electoral roll of the electoral  
roll, in the electoral petition was answered by  
the Supreme Court in detail. In view of the  
provisions of S. 10 of the Registration of  
People Act, 1950 where the Court's  
jurisdiction had been vested the Supreme  
Court has concluded that the person  
listed in the electoral roll are not open to  
challenge either before the Court or  
before Tribunal which considers the validity

of any election. This case was argued in 1868 for the Supreme Court indicated a finding that the provisions of 1858 Act mentioned above form a complete Code by itself in the matter of preparation and maintenance of electoral roll.

12. This question again arose in P. J. Bhagat v. S. D. Jais, AIR 1991 SC 1048 and it was opened by the Supreme Court as follows: —

The entire scheme of Act of 1950 and the Legislature of this jurisdiction, that the scheme made in an exercise of Act of a sovereignty can only be challenged in accordance with the machinery provided by it and not in any other manner or before any other forum unless some question of violation of the provisions of the Constitution is involved.

13. In this case no additional ground on which the Supreme Court said that the entry in the electoral roll cannot be challenged was its an interpretation of S. 100 of the Representation of the People Act, 1950. The Supreme Court relied upon S. 100 sub-cl. (1)(a)(iv) of Representation of the People Act which is as follows: —

(iv) by any contravention with the provisions of the Constitution or of the Act or of any rule or order made under this Act;

14. The Supreme Court was on the view that the ground, all election petition can be a violation of the provisions of 1950 Act. As the words that Act have been read as of 1951 to indicate the 1950 Act which lay down the manner and preparation of the electoral roll.

15. In S. Chakravarty v. S. Prasad AIR 1975 SC 117 the Hon'ble Supreme Court took the view that it is not open to an election petition to go behind the electoral roll and dispute over the question whether the names of persons included therein were right or not.

[The doctrine was taken after reliance was placed on the earlier decision mentioned by me. In view of the above I am of the opinion that though in the P. J. Bhagat (Sup. Act, 1991) challenges to the provisions relating to preparation of electoral roll have not been specifically included as has been done in the case of the Representation of the People Act, 1950 but in view of the fact that S. 7 of the Act read with the provisions of S. 1 of the

State Representation of Electoral Orders, 1970 are a complete code by themselves in that matter of preparation and maintenance of electoral roll and in the matters listed in the above-mentioned Act, then cannot be a subject of challenge in an election petition filed under S. 12 C of the Act.

16. It is however stated that the entries in the electoral roll can only be subject of challenge under S. 47(1) of the Act where election or where the day for first can to prepare the roll is grossly false to comply with the Act and the Rules, as being declared in detail while preparing the second statement.

17. In regard to the second statement made by the returned candidate, it is necessary to quote S. 12 C(1) of the Act which reads as under: —

12.C. Application for questioning the election.

(1) The election is a person as President or a State or a member of a State Legislature including the election of a person appointed under Article of the People's Party under S. 43 shall not be called in question except by an application presented in such manner as may be prescribed in the grounds that: —

(a) the election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed in the election or

(b) that the result of the election has been materially affected —

(c) by the improper acceptance or rejection of any nomination or

(d) by gross failure to comply with the provisions of the Act or the rules framed thereunder.

(2)

18. Under cl. (d) quoted above the election can be challenged on the ground that it was not a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed in the election. The words 'bribery' and 'undue influence' have been explained comprehensively under S. 12(d) sub-cl. (i) of the Act. Under cl. (b) election can be set aside on the ground that the result of the election has been materially affected by

improper acceptance or rejection of any new notice paper, unless such failure is brought with the permission of the Act or Rules framed thereunder (Chapter 1) of the Rules does the procedure for election of President and V. p-President, Rule 29 C has made the provisions of Rr 18 A, 18 B and 18 C of Chapter 1B applicable to the election of President and V. p-President. R. 18 B(2) provides the ground on which the Nominating Affidavit may reject any nomination paper. The strict evaluation of the fact that under it, whatever possible grounds can be shown whether or not of the failure, a challenge on the ground of improper acceptance or rejection of any nomination. The ground for the rejection 'No. 2 has nothing to bring has been made out of it if it is proved above namely, that by already involving the name of the petitioner in the alleged null, there is a gross failure to comply with the provisions of the Act and the Rules. It is, consequently, necessary to interpret the provisions of the sub-clause. In the sub-clause the expression words are 'gross failure to comply' with 18 C(2) of the Representation of the People Act, 1950 the election can be challenged on a number of grounds, mentioned in cl. 1(a) of subcl. 18 of rules (1) which has already been pointed above.

13. As to the challenge under the provisions of Representation of the People Act, concerned, a challenge can be for non-compliance with the provisions of the Constitution or of the Act or any Rules or Order made under that Act. But here these words have not been used by the U. P. Legislature. Here the challenge is on the ground of "gross failure to comply with the provisions of the Act or Rules framed thereunder."

14. In view of the above, the scope of challenge is a question under the U. P. Parliament (U. P. Act 1947) is different from the scope of challenge under the provisions of the Representation of the People Act, 1950.

15. When assuming of S. 12 C of the Act and the Rules framed thereunder framed for the election of the President and V. p-President, it is clear that if an election is challenged on the ground mentioned in cl. 1(a) of subcl. 1(a) of S. 12 C of the Act, the words "irregular and improper influence" on the basis of which challenge can be made, have been specifically

defined. Similarly, if challenge is made under cl. 1(b) of subcl. 1(b) of the said section, then too the Rules provide the circumstances under which improper acceptance or rejection of any nomination can be challenged, but it is important that the Act and the Rules are observed in challenge made under cl. 1(a) of S. 12 C of the Act. This has been left to the Election Tribunal to decide in the circumstances each case as to whether there has been a gross failure to comply with the provisions of the Act or the Rules framed thereunder which has materially affected the result of the election.

16. It is therefore necessary to examine the scope of the expression "gross failure to comply" mentioned in subcl. 1(a) of S. 12 C of the Act.

17. The word comply has been defined in Black's Law Dictionary as meaning "to yield, to accommodate or to adapt oneself to act in accordance with." In the context in which the word has been used in the sub-clause, the meaning to be given to the word comply in my opinion, should be to act in accordance with. It is apparent that the Legislature used the word gross failure without merely failure. A distinction has to be drawn between the words failure and gross failure. The act of the word gross indicates that it is a higher degree of failure.

18. In *Narinder v. Anil Registrar, Co-operative Societies, Varanasi*, AIR 1970 Vindh Pw 28 a Divisional Bench of the Madhya Pradesh High Court, while interpreting the expression gross negligence held it to be -

"There is a difference between negligence and gross negligence, although the latter denoting a higher degree of negligence. Gross negligence denotes a higher degree of negligence and negligence has nothing merely from some want of foresight or blunder of negligence but from some culpable default."

19. In *Chitpal Singh v. Chandram, Vasant* 28 the meaning to be given to the word gross when used in sub-clause 1(a) has been stated as under -

In this case, the adjective has been defined as meaning beyond allowance, out of all measure, more culpable, or gross blameworthy but not blameworthy. In this sense, it has been held equivalent to "culpable."

26. In Black's Law Dictionary, the word *gross* has also been defined as *clear*.

Out of all reasons, *intentional* reason can be treated. It might be treated as a gross violation of the gross *grossness* *grossness*.

27. In Corpus Juris Secundum, Volume 3, the expression *intentional* has been defined as a verb:

...intentional to perform a duty or appointed function, and not intentional in the sense of non-performance of a duty, that is, in the absence of neglect, and covers both intentional and unintentional non-performance.

28. On a consideration of the *petitioner* of the words *gross failure* and *grossly* mentioned above, I am of the opinion that the words *gross failure* to comply should be interpreted to mean: *flagrant* *intentional* to perform a duty in accordance with the Act and the Rules framed thereunder, whether that was intentional or unintentional. The mere technical non-compliance with provisions of the Act and the Rules is not sufficient for challenging the election.

29. If an officer or whom the duty has been put to perform the election machinery, in the provisions of the Act and the Rules framed thereunder does not follow the same and was in flagrant violation of the same and the Court is of the opinion that the manner in which the duty by the officer has resulted in materially affecting the election, then can be a ground for challenge of the election.

30. In *Shaggle v. Subram Singh*, 1962 All L.J. 1001, it has been held by the Court that the expression to consider the scope of Cl. 10(a) of subsec. 1(2) of S. 12 of the Act, is observed as under:—

In cases where the Election Tribunal comes to the finding that the officers concerned with the preparation of register of members had deliberately and intentionally framed that register dishonestly by adding names which should not have been in it or by omitting names which should have been in it, then would be, of course, cases where the inclusion of names in the register in contravention of

rules framed under the law is a *gross failure* to happen whenever the entries in the register are made by the officers concerned according to the information available to him at the time of preparation of the register. Even if it happens that some names are erroneously omitted or some erroneously entered it would not be a case of failure on the part of the officers to comply with the provisions of the Act.

31. In case of the above *Shaggle* judgment by the Division Bench of the Court, it is clear that it is only when there is a gross failure to act in accordance with the Act and the Rules by the officers to whom the Legislature has put a duty to consider the election then only the election can be challenged on the ground mentioned in Cl. 10(a) of subsec. (2) of S. 12 of the Act.

32. In the *Shaggle* case a consented election was a gross failure on the part of the officer concerned. I am of the opinion that it is my obligation to that effect. The only allegation is that the petitioner should have pointed out that his name had been included in the election roll of any other body which he desired to. The cause possibly be a ground in my opinion for challenging the election under Cl. 10 C of the Act. The relevant information made by the member named for the petitioner in my opinion also is well founded.

33. In case of the above I allow the petition and quash the order dated 24. Sept. 1983 passed by the Joint Additional District Judge, Pithor. The petition shall be deemed to be a jointly stated Petition of the Joint Election Tribunal. The parties are directed to bear their own costs.

Forces allowed

1988 ALL L.J. 321

H. R. MITHA AND A. R. VIJAYA, JJ.

The Managing Committee, Ram Prasad Bursi Higher Secondary School, Bursi, Patna v. The Deputy Director of Education, Bihar Region, Bursi and others, Opposite Parties.

Civil Misc. Writ Petn. No. 487 of 1985 Or. 134-185

LORD GUYA AND JUDITH

**U. F. High School and Intermediate-College (Payment of Salaries of Teachers and Other Employees) Act (24 of 1975, S. 42) —** There came notice in matter of management of management — Calling upon management to comply with directions issued by Deputy Director — Not condition precedent.

Sentence/sentence/sentence that after the Deputy Director has received the recommendations made by the District Inspector of Schools under rule 10, he has an option in the matter and the court is not open to him. The two alternatives are —

(1) That he can call upon the management to comply with the directions or provisions specified in the recommendations made by the District Inspector of Schools or

(2) require the management to show cause within a week why it should not be suspended.

The first alternative is not a condition precedent for exercising of the second alternative. (Para 1, 2)

S. K. Verma, for Petitioner Standing Counsel for Opposite Parties

**IN RE SETHI, S. —** We are not satisfied that there is any issue in the petitioner's submission that before issuing a notice under S. 5 of the Uttar Pradesh High School and Intermediate College (Payment of Salaries of Teachers and Other Employees) Act, 1971, requiring the petitioner to show cause why it should not be suspended, it was obligatory upon the Deputy Director of Education to call upon the petitioner to comply with certain directions issued by him (S. 42) which were due. —

On receipt of a recommendation under rule-10, the Regional Deputy Director may call upon the management to comply with the said directions or provisions or to show cause within a week why the management should not be suspended. —

Sentence/sentence that after the Deputy Director has received the recommendations made by the District Inspector of Schools under rule 10, (1) he has an option in the matter and the court is not open to him. The two alternatives are —

(1) That he can call upon the management to comply with the directions or provisions specified in the recommendations made by the

District Inspector of Schools or

(2) require the management to show cause within a week why it should not be suspended.

2. The first alternative is not a condition precedent for exercising of the second alternative.

3. Learned counsel for the petitioner has also submitted that in the circumstances of the case the order passed by the Deputy Director was not appropriate. We are not inclined to go into this aspect of the case. The Act provides an appeal against the proposed order and there is no reason why the petitioner should not, for questioning the propriety of the order made by the authority provided in the Act itself.

4. In the result we find no merit in the petition which fails and is dismissed.

Further dismissed.

1996 JUL 13 116

S. K. VERMA, J.

Annual Mag. Poles Petitioner v. State Transport Appellate Tribunal, U.P. Lucknow and another. Respondents.

Civilian Writ Pet. No. 2111 of 1979 (2/26-8-1985)

**(A) State Transport Act (19 of 1975, S. 142) —** Extension of authority — Power of — Can demand a service order in default of appearance or in default of presentation.

The words may pass such orders as extension in the matter of extension for any other authority under the extension of authority with the jurisdiction to demand the service in default of appearance of the applicant. An order demanding the extension order in default of appearance or in default of presentation will be an order depriving of the service and such an order will be a final one. (Para 6)

In S. 142 A, a mandatory duty has been laid upon the concerned authority to pass such orders as may be necessary in the case. The Tribunal should be prevented from passing orders that are not intended to be consequential upon the carrying out of the statutory duty thereby, the

U.P. TRANSPORT, 19/7/1985/1985

absence of power, discharging a person either in default of appearance or in default of prosecution will be an irregular or consequential act. In S. 94A there is no provision either express or implied making a reference upon the Tribunal to give its decision on the status. Therefore, the second statutory order S. 94A has the power to change the reference either in default of appearance or default of prosecution. Case law discussed.

**(b) Minor Vehicles Act 1962 (MVA) 1962 - Extension order - Default of - Extension application - Hearing of - Adjournment application of Court on ground of personal illness - Adjournment to be granted**

Where the Court had sent the application for adjournment of hearing of an application for extension of licence and had adjourned the personal illness at the present, the case was enough for the adjournment of the hearing on the particular date. Therefore, the Tribunal had ruled adversely (rejecting) the application for adjournment by the Court on the personal ground.

Cases Referred	Chronological Order
AIR 1971 AC 173	1971 AC 173 195
AIR 1968 AC 126	1968 AC 126 195
AIR 1968 AC 127	1968 AC 127 195
1968 AC 127 128	1968 AC 127 128 195

L. P. Matham for Petitioner, Standing Counsel, for Respondent.

**ORDER** - The petitioners impugned for reference for quashing the order passed by the State Transport Appellate Tribunal. L. P. Matham (hereinafter referred to as the Tribunal) denying the application for review submitted at appearance before the respondent order relating to validity of the order under the provisions of the Motor.

3. Admittedly neither the petitioners nor the respondent were present at the time that for the hearing of the review. The Tribunal on Nov. 3, 1975 passed an order -

"The review is dismissed in default of the respondent."

March 1, 1976 was fixed for the consideration of the application made by and on behalf of the petitioners for recalling the order passed on Nov. 3, 1975. The Tribunal passed the

order with the following findings of fact and law. The applicant as well as his counsel are absent. The Tribunal has reported that the allegations made in paragraphs 4 and 5 of the application are correct. Counsel has sent an application praying for adjournment. The petitioners too have brought the application for an adjournment with the case. As the application has not been legally presented at the time of the hearing, on the same date it rejected the application for adjournment.

3. A case brought about has been made. First, the Tribunal has not jurisdiction to extend the order under the provisions of the Motor. Secondly, the Tribunal was not authorized to extend the application for adjournment.

4. The Tribunal was not authorized to extend the order under the provisions of the Motor. The Tribunal was not authorized to extend the order under the provisions of the Motor. The Tribunal was not authorized to extend the order under the provisions of the Motor.

The State Transport Appellate Tribunal may either on its own motion or on an application made to it call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority and in which an appeal has been made if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal. The State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and may set aside the order if it is found to be improper or illegal.

The above provision, except the words underlined by me, are substantially the same as was originally enacted in Act No. 10 of 1936. The words underlined have been inserted by Act No. 36 of 1950. The intention is that the Tribunal exercise a summary jurisdiction to pass an order on the merits of an application for review and, therefore, the demand in default of appearance is implicitly provided. There has been no such order. It is also explained that although sub-section 3 of the Motor Vehicle Act, 1947 (hereinafter referred to as the Motor) provides that the Tribunal may, for sufficient reasons, refuse an appeal, dismissed in default or the time of presentation of an application received by an appellant within fifteen days of

the lower lodge of the order of dismissal of the appeal – no such provision has been made in respect of an applicant intervenor. It is also inconsistent that the rules envisage a comparison between an appeal and a review in R. 1.1.1 (i) – does the procedure to be followed in case of death of a witness remain the same?

[illegible]

4. We have, therefore, no constraints upon the phonology used by the Legislature in the creating part of  $\delta$ . It is not known if legislative words whether a two-syllable word or a so-like a three-syllable word with fold-syllables even though a fold that a particular syllable before it is either identical or immediately following of the previous or a preceding three-syllable. Such a constraint should be made in a list report in any system, such as are the numbers 1) to 4. The words may pass such orders in relation to the case and down for are only enough to show the relative authority with the preference to demand the creation or default of appearance of the syllable. An order defining the previous syllable as fold-syllable or as default of pronunciation will be an order disposing of the system and not an order of law.

3. In *Inter-Korean English Conversation* (Practical AFR 1108 MC 1237), a. An office AFR issued by Baker AFR No. 17 of 1980 which authorized the Prime Government to call for loans any authority, or officer subordinate to it, in regard of such paragraph; and after instituting such loan; from such evidence as it thinks fit, came up for consideration. It was held:

... These processes, just mentioned as a "black box" as not connected to the passing of values, which are final in character.

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regional authority had the power to accept individual members

8. The problem can be approached from another angle. In § 54-A, a statute that date has been cast upon the judicial authority to give each court as a choice fit to the case. The Tribunal should be permitted to possess such powers as are incidental or consequential upon the carrying out of the statutory duty. Surely the extent of power denoting a relation either as failure of appearance or as default of prosecution will be as incidental or a consequent of it. It may be remembered that in § 54-A there is no provision either express or implied making it imperative upon the Tribunal to give its decision as to the merits and demerits of the case, thereby not only being under § 54-A, but by Act has power to demand revision either as default of appearance or default of prosecution.

**Dr. E. Jane M. H. Seligson** - Counsel  
Attorney, AIR, 1971. AIR's Defense team  
of the Court was called upon to represent  
the U.S. 3 of the U.P. (Transportation Control  
of Race and Progress, Inc. 1971) and to decide  
whether under the transportation the terms of  
the treaty could determine the status in detail  
of appearance of an applicant before it. The  
final decision was: —

The Commissioner shall have the application made under sub-section (2) and, he may if he is not satisfied as to the correctness, legality or propriety of the order passed by the District Magistrate do as to the regularity of proceedings and, before that, either or reverse his order or make such other orders as may be just and proper.

While holding that those provisions did not empower the Commissioner to dismiss the revenue in default of appearance of a party, the Bench laid emphasis on the words 'the Commissioner shall issue the appointment' in S. 144A of the Act in the fact that that word 'shall' on its meaning, on its ordinary, the revenue authority has been empowered on whether will have not to call for the record of a particular case. Of course, the discussion has to be concerned on judicial considerations. It is to be noted that the Bench has awarded the judgment of Bench Chaudh, if it is that will also had taken the view that impact the provisions contained in section 144A of S. 141 the



Constitution had an inherent power of dispensing the revenue for default of the applicants of a party. The reasoning of the Division Bench appears to be based on the well known principle that when a matter is ripe for finality within the ambit of the express provision of this state inherent power being vested is regarded as abrogated by the Legislature.

(8) In *Hardman, Minto Wadia v State Tax Officer* (1964) 15 STC 116 a learned single judge of the Court held that it is of the U. P. Sales Tax Rules which empowered the appellate Court to dismiss an appeal for default was ultra vires the Act. Accordingly, the Court quashed the order of the appellate authority dismissing the appeal on default of appearance. The learned judge based his judgment on the provision as contained in the second proviso to rule 13 of S. 9 of the U. P. Sales Tax Act which was —

"Provided, nevertheless, that the appellate authority shall not exercise any power or perform any function therein except those contained in or attributed to him in such orders."

He also emphasized a point for consideration under Cl. 9 which empowered the appellate authority to set aside, reduce, enhance or remit the assessment or (b) set aside the assessment and direct the assessing authority to pass fresh order after such further enquiry as may be deemed, or confirm or amend the order imposing penalty or reduce the amount of penalty imposed. The learned judge took the view that the central proviso overrides Cl. 9 and ruled out any exercise of the inherent appellate power which was presumed to vest in all judicial and quasi-judicial bodies. He also took the view that the appellate Court under S. 9 of the Sales Tax Act was a court of law in the general public interest and particularly on behalf of the public revenue and in so far as such were protected through the intervention of the Sales Tax Act. He also held that the legislative enactment was that the appeal were filed by the assessee should be disposed of early on its merits. This was a *Cor Officer*.

(9) In *Comptroller of Income-tax Madras v Chinnappa Madhava AIB* (1953) 24 ITR 206 (9) of S. 23 of the Income Tax Act which was to the effect that the appellate authority

may after giving both parties an opportunity of being heard, pass such orders thereon as it thinks fit and that consequently any such order in the instant and to the Commissioner came up for consideration. It was held after emphasizing on the word "thereon" that the appellate authority was bound to give a proper direction on questions of fact as well as law which could be done if the appeal was disposed of on its merits and not dismissed owing to the absence of the applicant. Accordingly, B. 24 of the Income Tax Rules which provided the dismissal of an appeal on default of appearance of an applicant, was struck down as being in conflict with the provisions of section 24 of S. 23 of the Income Tax Act. The learned judge is consequently wrong. Furthermore, the scheme of the Income Tax Act, particularly of S. 23 as employed in the context, indicated a definite intention that for appeal had to be disposed of on merits. This case was therefore, does not advance the cause of the assessee.

(10) The Tribunal while exercising power under S. 66A exercises quasi-judicial powers. It is not a Court which issues binding precedents in application in Courts are not applicable to it. No rules have been framed as to the manner in which proceedings before it shall be conducted. It is also not the locus standi for the petitioner to impugn a somewhat odd procedure in sending the application for adjudication of the revenue through some stranger. It can be asserted that the conduct was irregular, improper and he was that application from this place. It is also to be noted that the ground for seeking the adjournment was the illness of the applicant himself. Obviously the counsel had signed the application. The Tribunal had not expressed any doubt about the signature of the counsel on the application. The mere fact that the learned counsel had sent the application and had introduced the personal document in the ground was enough for the adjournment of the hearing of the revision application in the particular case. The Tribunal not only took adjournment on the view of the matter but also acted reasonably adversely in rejecting the application for adjournment made by the assessee on two personal grounds. Consequently the order rejecting the application for adjournment was valid.

(1) The petition succeeds in part. The order dated March 1979 passed by the Tribunal classifying the application for recognition of the license No. 448 of 1978 is quashed. The Tribunal is directed to dispose of Miscellaneous application No. 27 of 1979 or Revision No. 448 of 1978 on merits and on a reference to law. The parties are directed to bear their own costs.

*Prayer partly allowed*

PPA-ALL, L. I. 100  
= AIR 1980 Allahabad 142  
FUEL BENCH

H. V. SEEN & T. YESHA AND  
V. K. KUMAR, JJ

Chicago Printed Sales: Petitioner v. State of Uttar Pradesh and others: Respondent

Crd. Mat. 1981 Pw. No. 4714 of 1979 D.V. 15-1-1981

(4A) *State Act (38 of 1955), Ss. 25, 26 — Licensee — Revocation or suspension — Opportunity of hearing to licensee — Act includes hearing to licensee prior to revocation/suspension of license — License issued at inquiry held for revocation or suspension class hearing is held in principle of natural justice. AIR 1961 Cal 246, AIR 1961 Cal 249, AIR 1974 Orissa 168, AIR 1974 Kar 142, AIR 1975 Pung & Har 112 Held per majority: (Consensus of India, Art. 226).*

To the inquiry held by the licensing authority with a view to find out if the conditions for issuing/suspending the sales license exist, a prior hearing for the licensing authority to discuss the license and the licensee in such inquiry cannot claim as of right — *conveyed or that, based on principles of natural justice — that he must be heard and brought an opportunity to place his version of the case before the licensing authority. AIR 1966 Cal 245, AIR 1969 Cal 249, AIR 1974 Orissa 168, AIR 1974 Kar 142, AIR 1975 Pung & Har 112 Held per majority. AIR 1980 Cal 275 Post.*

(Para 5)

Section (2) makes a derogation upon the licensing authority to while passing the order on issuing/suspending an area license issued in writing the reasons therefore and to —

UB/AC/GMR/BA/VVQ

document, furnish a brief statement thereof to the holder of the license within a specified time as well as for a public grant to do so. The legislative enactment behind S. 17(a) surely, that if at all the licensing authority is obliged or constrained to or to issue the grounds for revocation/suspension of the license it is only after the order for revocation/suspension has been made. It is absolutely clear S. 17(a) that while any obligation under para (a) the licensing authority is better sitting such order commencing the grounds for revoking or suspending the license to the licensee. Finding of any obligation on the licensing authority to issue the grounds for revoking or suspending the license to the licensee before the order for revocation or suspension of the license is made, would therefore result in forcing the licensing authority to do something which the statute does not oblige it to do. (Para 3)

To say that despite specific statutory provisions the licensing authority is, according to the principles of natural justice, obliged to afford an opportunity to the licensee to show that the grounds mentioned in S. 17(a) do not exist is not proper. It is now well settled that rules of natural justice do not supplant the law but supplement it. It is also noted that if a statutory provision can be read consistently with the principles of natural justice, the courts should deem that statutory provisions either specifically or by necessary implication, include application of any rule of natural justice then the courts cannot ignore the mandate of the legislature or the statutory authority and read into a provision principles of natural justice. The statutory provisions contained in Sec. 17 by necessary implication include the applicability of the said rule of natural justice all the steps the licensing authority makes in order the revocation/suspension of an area license. The legislature having opted to the fact that the licensee involved act in respect of derogation is upon him specified the steps in which the principles of natural justice are to work come to become applicable and has thereby ruled out the application of such principles at any other stage. (Para 6)

(B) *State Act (38 of 1955), S. 17 — Area License — Powers of licensing authority in revoking/suspension — Scope — Licensing*

authority cannot pending inquiry into revocation or suspension of a license, order its suspension — Such provisions are valid, as powers conferred by § 37.

The licensing authority has no power to suspend the same license pending inquiry into its revocation or suspension. (Para 23)

The object of the inquiry that a licensing authority may, while proceeding to consider the question as to whether or not its own license should be revoked or suspended, like to make, clearly is to enable the authority to make its own decision as to whether or not the licensee is to be licensed or not. This was in the case of the matter at the trial, he takes that where a licensing authority, while upon such an inquiry, it is not clear, not concerned about suspension of the conditions imposed as to (a) to (d) of § 37(3). So long as it is not concerned to suspend or make its own decision revoking or suspending an area's license as contemplated by the provisions to be made out. (Para 40)

Section 37 empowers the licensing authority to make its order of suspension pending inquiry into revocation of the same, subjecting making of the order for revocation/suspension not only to be made but also power is implied as the power conferred upon the licensing authority by § 37. The power itself is limited to suspension of revocation of such power in the licensing authority namely that while such power is limited to such as the licensing authority it may act, be possible to, in case of inquiry, secure public peace and safety and that the very object behind the provision may be defeated if revocable. In case a licensee applied to the licensing authority for the purpose of obtaining by the licensee a grant to endanger public peace and safety, it can straight-up and without, holding any inquiry proceed to revoke/suspend the same license. However, whereupon, the material before the licensing authority is a case, apparent to it that there is no substantial danger to public peace and safety and the licensing authority proceeds to find out whether there is any likelihood of public peace and safety being affected in case license fails, it cannot be said that there is any such inquiry as to or pending the revocation/suspension of the license area before the licensing authority gets satisfied. Considering the nature and the object of the

inquiry, it cannot be said that such revocation of the power to suspend an area's license pending inquiry has the effect of defeating the object for which such a power has been conferred upon the licensing authority. (Para 28)

Before a power can be implied as an incidental power, the Court has to be satisfied that exercise of such power is absolutely essential for the discharge of the power conferred without which it is impossible for it to exercise. It is not enough to say that the power to suspend an area's license pending inquiry is absolutely necessary, nor can it be said that the power to revoke/suspend a license in the circumstances mentioned in Section 37 cannot be exercised unless a power to suspend the license pending inquiry is also conferred to the licensing authority. (AIR 1970 SC 140) (Id. 38)

Case Cited	Cited as	Para.
AIR 1966 Cal 179		9
AIR 1972 Pung & Bar 122		43
AIR 1974 SC 40	1974 LIL SC 8	4
AIR 1971 Bar 402		13
AIR 1976 SC 140		20
AIR 1975 Orissa 119		43
AIR 1968 Cal 349		13
AIR 1968 Cal 283		11, 22
AIR 1968 Cal 283		13

**II. 5. SECOND —** While considering the question as to whether the Executive Authorities have jurisdiction or power to suspend an area's license pending inquiry into its revocation/suspension or suspension, a Division Bench of the Court has referred following questions of law for the opinion of a Full Bench —

(1) Whether there is power to suspend an area's license pending inquiry into its revocation or suspension?

(2) Whether in view of the statutory provisions and situation upon the authorities to afford an opportunity of hearing prior to suspension pending inquiry?

And also where the matter has come up before us.

1. It is apparent that the second question mentioned above would arise for consideration only if the first question is answered in the affirmative. In order to answer the first

persons, it will be necessary to determine the nature of the request, which is hereby authorized, under the provisions of Section 17 of the Act, that the holder referred to in the Act, requested to consider before ordering cancellation or suspension of a license.

3. Subsection (3) of Section 17 of the Act which are referred to in paragraph read that —

(a) the licensing authority may, under existing suspect a license for some period or it shall be or revoke a license —

(b) if the licensing authority is satisfied that the holder of the license is prohibited by the Act or by any other law for the time being in force from exercising, having in his possession or carrying out any act or commission, or is of interest thereof or is for any reason unfit for a license under the Act; or

(c) if the licensing authority deems it necessary for the security of the public peace or public safety to suspend or revoke the license; or

(d) if the license was obtained by suppression of material information or on the basis of wrong information provided by the holder of the license or any other person in relation to the time of applying for it; or

(e) if any of the conditions of the license has been contravened; or

(f) if the holder of the license has failed to comply with a notice under subsection (1) requiring him to deliver up the license.

(3) Where the licensing authority may, at an order may, a license under subsection (1) or an order suspending or revoking a license under subsection (3) a third person is wrong that means that the holder of the license is deemed a third statement of the same nature in any case the licensing authority is of the opinion that it will not be a third statement of the same nature.

4. Subsection (1) of Section 17 of the Act that provides that any person aggrieved by an order of the licensing authority suspending or revoking a license may prefer an appeal against that order to such authority (hereinafter in the appellate authority) and within such period as may be prescribed, subsection (3) of Section

18 after stating that in disposing of an appeal the appellate authority shall follow such procedure as may be prescribed, provided that no appeal shall be disposed of unless the applicant has been given a reasonable opportunity of being heard.

5. A potential third statement provides indicates that the licensing authority has been given the power to suspend or revoke a license only if an other condition mentioned in subsection (a) to (f) of subsection (3) of Section 17 of the Act exists. Subsection (3) of Section 17 makes it obligatory upon the licensing authority to make passing the order suspending or revoking a license. It is not a matter of having the reason decided and so no demand for a third statement thereof to the holder of the license unless it appears that it will not be a public interest in the law. According to the text, the right for recording of the reasons for cancelling or suspending a license is needed only when such an order is made and not before it. A third statement of such reasons is to be communicated to the licensee only if

(a) the licensee asks for it; and

(b) the licensing authority does not consider disclosure of such reasons to be against public interest.

The provision that the reasons for cancellation/suspension of a license is to be recorded when the licensing authority makes the order and that a third statement thereof is to be communicated only if the licensee demands it and that too only where the licensing authority does not consider disclosure of such reasons to be against public interest, makes clear legislative intention that, if at all, the licensing authority is obliged to communicate to the licensee the grounds for revocation/suspension of the license only after the order for revocation/suspension has been made, making clear that the proposed rule on any obligation on the part of the licensing authority to before making such order communicate the grounds for revoking or suspending the license to the licensee. Accordingly, placing of any obligation on the licensing authority to notify the grounds for revoking or suspending the license to the licensee before the order for revocation or suspension of the license is made, would result in forcing the licensing authority to do something which the statute

does not oblige it to do. Such compliance flowing from any source whatsoever would not be in conformity with the privilege guaranteed in Section 17 of the Act.

6. The intention that even though the power is whole resulting in the issuing authority's exercise thereof as to the inmate does not specifically provide for affording of an opportunity to the inmate to show that the proposed punishment is unwarranted. If Section 17 do not make the hearing authority a presiding judicial officer of natural justice, obliged to afford such an opportunity then not appeal to us. It is now well settled that rules of natural justice are not absolute rules nor can they be limited to the position of fundamental rights. Their aim is to secure justice as to prevent miscarriage of justice. They do not supplement but they supplement as if a statutory provision can be read consistently with the principles of natural justice the courts should do so. But if a statutory provision either specifically or by necessary implication excludes application of any rule of natural justice then courts cannot ignore the mandate of the legislature or the statutory authority and read into a purported provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power. The natural justice conferred the purpose for which it is conferred and the effect of the exercise of the power. *Deebley case of United of India*, 1-4 *India*, AIR 1971 SC 48.

7. In the instant case, as has already been pointed out, the statutory provision contained in Sec 17(3) of the Act would not be compatible with the principles of natural justice relied upon by the learned counsel for the inmate. In the opinion the learned provisions contained in Sec 17 of the Act by necessary implication exclude the applicability of the rule of natural justice at the stage the hearing authority makes an order for revocation/suspension of an inmate's license.

8. Again, a reading of the provisions contained in Sections 17 and 18 of the Act in conjunction of one unopposed submission clearly brings out that the licensee is afforded right

provisions where the hearing obliges the issuing authority to give reasons for revoking/suspending a license or withdrawing and thereafter afford him an opportunity to be heard by the appellate authority on all other aspects of the matter. It is evident that having regard to the fact that licensee involved in such manner in respect of dangerous weapons, the legislation is so written through that an opportunity of being heard should be afforded to the licensee at a stage following revocation/revocation of the license and not prior to it. Thus, the legislature has in a clear way specified stage at which the principles of natural justice are to be applied to become applicable and has thereby ruled out the application of such principles at any other stage.

9. It seems that a reading together suggest to us that the hearing authority has authority to come to the conclusion that such pending revocation/suspension of license warranted a grounds to be in of Section 17 again. However, the provision herein left it down that before coming to such a conclusion the hearing authority should first be heard by the licensee or his/her formal agency. The hearing authority may consider information being laid before it, but its own reflection process is held as inquiry with a view to find out the grounds for revoking/suspending the same license may not, initially apparent, it would, in such inquiry not be necessary for the hearing authority to summon the licensee and the licensee cannot claim a right of natural justice, or that 'based on principles of natural justice' that he must be heard and to give an opportunity to play his version of the case before the hearing authority. We are in the same supported by a Division Bench decision of Calcutta High Court in the case of *Sanjay Chandra Choudhary v. State of M. In Pragnan*, AIR 1980 Cal 27.

10. In support of her submission that the hearing authority is whole proceeding to revoke or suspend an inmate's license, issue of it is an inconsistency with the principles of natural justice, learned counsel for the licensee strongly relied upon a Division Bench decision of the Court in the case of *State of M. P. Through Ray Home Department, Lucknow v. Jyoti Singh*, AIR 1980 All 385. In that case, the Court was concerned with the question as





officer, and that we connect a power as to be regarded as a power essential to or implied in the power conferred upon the issuing authority.

10. In regard to the various suspensions as to the location of the power and those of the issuing authorities are required and are limited by the statutory provisions contained in Section 17 of the Arms Act and in part following observations made by the Supreme Court in the case of *Isaiah General Officer v. S. N. Singh*, AIR 1950C190a cannot be said that it is a power inherent in it. —

The Court further the question of nature of power and those as well as the powers and duties of its officers are all regulated by the Act. Hence no question of any inherent power arises for consideration.

The other submission that such a power to suspend or arrest before pending enquiry can be said to be a power essential to the power conferred by Section 17 of the Act does not appeal to us. It is to be placed in question whether in the absence of a provision like the one contained in Section 17 A of the U. P. General Clauses Act (which specifically provides that where a U. P. Act confers a power it will be deemed that all incident powers for exercising the power have also been conferred), as the General Clauses Act (which governs the Arms Act, an incidental power can be read in the statute because otherwise it is never without expressing any intended operation on the power, we proposed to consider the question on the footing that where a statute confers a power it should also be taken to have conferred all other incidental powers as well. We further the question with regard to the power that can be regarded as essential for the proper exercise of statutory power has also been considered by the Supreme Court in the case of *Isaiah General Officer v. S. N. Singh*, AIR 1950C190a wherein it has made the following observations: —

"It is well recognized that where an Act confers a jurisdiction it implicitly also gives the power attaching thereto, in employing such words as are essentially necessary to its execution. But before applying the doctrine of such a power the court must be satisfied that the exercise of that power is absolutely essential to the discharge of the power

conferred and not merely that it is convenient to have such a power. We are not satisfied that the power to place under suspension an officer is absolutely essential for the proper exercise of the jurisdiction conferred under S. 17 of the Act. It cannot be said that the power to suspend cannot be properly exercised without the power to suspend pending enquiry. The responsibility of interference with the career of an officer, or of further exercise of powers, are not sufficient to enlarge the scope of a statutory power. If it is admitted that such power is possible an officer would have been left sufficient to arrest and detain him pending enquiry and trial. There would have been no need to make specific power to arrest and detain persons charged with offences before their conviction.

11. It is thus evident that before a power can be implied as an incidental power the Court has to be satisfied that exercise of such power is absolutely essential for the discharge of the power conferred and not merely that it is convenient for its exercise. In our opinion, we are satisfied that the power to suspend an officer before pending an enquiry of the nature that a pending enquiry may take place before selecting a person for promotion, suspension of the arms licence is absolutely necessary for use of the law that the power to revoke/suspend a licence in the circumstances mentioned in Section 17 of the Act, cannot be interpreted as a power to suspend the licence pending enquiry is also confined to the issuing authority.

12. In the result, we are of opinion that having regard to the objects and purpose of the provisions contained in Sections 17 and 17 A of the Act and the nature of the enquiry that a licensing authority may make before granting, renewal, suspension of an arms licence, it has no power to suspend the arms licence pending enquiry into an applicant's competence. The first question referred to us accordingly answered in the negative. In view of our answer to the first question, the second question need not be resolved by the learned judges who are with the consideration and it is not necessary to answer the same.

13. Let the writ order connected with the case in the case let stand with our opinion.



the plaintiff before the coronial inquest for getting a propulsive system.

Order accordingly.

1984 A23, L 2 186

S. R. 1444293.1

Ms. Charles Stichter/Studio Stichter-  
Furnace v. State of U.P. and others.  
Respondent.

Cor/Mas. Writ Petn. No. 194 of 1982. D/-  
24-8-1982.

U.P. Sugarcane (Purchase Tax) Act (of  
1941) s. 2(3)(b) — U.P. Sugarcane (Purchase  
Tax) Rules (1941), R. 32A(3) — Exemption of  
opium of being taxed on removal from —  
Initially, intention as to functioning of new  
crusher in the season, given — Subsequent  
intention as to functioning of new crusher  
only, given 15 days before date of  
commencement of said — Second declaration  
in operative declaration.

The petitioner was not under the meaning  
of the Act. It remained an option of being  
taxed on the purchase of sugarcane made by  
it on assumed basis. In compliance with Rule  
13A(3) on 15th Nov. 1981 it submitted a  
declaration in Form XIII stating therein that  
it would commence functioning from 4th  
Jan. 1982. It was also informed therein that  
the two crushers installed in the year would  
function. On 2nd Dec. 1981 the petitioner  
made a fresh declaration in Form XIII stating  
therein that the crusher would commence  
functioning from 4th Jan. 1982. However, it  
made a statement during the current crushing  
season that the other crusher would be used.  
Despite that it was proved the petitioner was  
called upon to pay the tax on the footing that  
both the crushers worked and it deposited the  
amount. Thereafter it made an application to  
the appropriate authority praying that the  
first amount may either be refunded or on  
necessary adjustments may be made towards  
that tax which the petitioner was liable to pay  
at first.

Held, claim of the petitioner should be  
allowed. Before the declaration given on 24th  
Nov. 1981 became effective the petitioner

gave a fresh declaration on 2nd Dec. 1981. In  
both the declarations the date fixed for the  
commencement of the crushing operation was  
4th Jan. 1982. The first declaration remained  
a mere proposal before the due date, namely,  
15 days before the date specified, viz. 4th  
Dec. 1981 a fresh declaration was given.  
Therefore in the eye of law the declaration  
which was effective for the purpose of the  
remission of tax upon the petitioner was  
the declaration given on 2nd Dec. 1981. 1982  
Tax LR 467 (1982) 1989. Doing. (1982) 11

Case Related Chronological Form  
1982 Tax LR 467 (1982) 1989. A23 186  
NOC 461482 (1982) 2

Read Hans Zuck, for Petitioner. Standing  
Council for Respondents.

ORDER. — The petitioner availed the  
provisions of the Customs Act 1962 under Art. 226-  
clause Commission and prays that the order passed  
by the authority below although subject to  
dispute on its respective income payment shall  
be it is with purchase tax may be quoted.

2. The petitioner is a unit under the  
meaning of the U.P. Sugarcane (Purchase  
Tax) Act 1941 (hereinafter referred to as the  
Act). It remained an option of being taxed on  
the purchase of sugarcane made by it on  
assumed basis. In compliance with R. 13A(1)  
of the Sugarcane Purchase Tax Rules 1941  
hereinafter referred to as the Rules it had  
on 15th Nov. 1981 submitted declaration in  
Form XIII stating therein that it would  
commence functioning from 4th Jan. 1982. It  
was also informed therein that the two crushers  
installed in the year would function. On 2nd  
Dec. 1981 the petitioner made a fresh  
declaration in Form XIII stating therein that  
the crusher would commence functioning from  
4th Jan. 1982. However, it made it clear that  
during the current crushing season only one  
of the crushers would be used. It is not disputed  
that the petitioner in fact conducted one crusher.  
This resulted from the fact that on assumption  
made on several occasions only one crusher  
was used for crushing. Despite this, the petitioner  
was called upon to pay the tax on the footing  
that both the crushers worked and it deposited  
the amount. Thereafter it made an application  
to the appropriate authority praying that the  
first amount may either be refunded or on

necessary adjustments may be made towards the tax in both the payments was liable to pay interest. The application was rejected by the Assessing Authority by an order dt. 28th Jan 1981. The Appellate Authority on 14th Mar 1981, dismissed the appeal of the petitioner and confirmed the order of the Assessing Authority. These orders are the subject matter of the writ petition.

3. The authorities below have proceeded on the assumption that the declaration given by the petitioner on 24th Nov. 1980 with regard to the number of shares to be held by during the course year became permanent and could not be changed by the petitioner until any subsequent year. It appears that the authorities have taken this view on account of a decision given by the Court which is reported as 1980 CPTC 54 (1980 Tax LR 547). Incidentally, the happen to be a Full Bench decision of the Court. Having considered the facts of the present case and having read and revised the Full Bench decision, I am of the opinion that the authorities have clearly erred and misapplied the decision of the Court. In the Full Bench decision the owner of the unit concerned had given a declaration that she and would continue functioning as a specified class. At the stage the owner of the unit concerned had been licensed for three different months. The number of shares to be used was not at all specified in the declaration. The striking of the register commenced on the specified date. Thereafter during the course of the ensuing years, no alterations was given by the owner of the unit. Since amount of unremitted share income transfers for members of families to be used would stand reduced. The Court took the view that the declaration having become absolute in so far as the unit then having commenced striking registers from the specified date, the change in the number of shares to be used during the course of ensuing months will not be permissible under the statute.

4. So far as the present case is concerned, the facts are somewhat different. As already stated, before the declaration given on 24th Nov. 1980 became effective the petitioner gave a fresh declaration on 2nd Dec. 1980. It is to be remembered that in both the declarations the date fixed for the

commencement of the striking process was 4th Dec. 1980. The first declaration contained a pre-empted withdrawal for that date namely 33 days before the date specified viz. 4th Dec. 1980. A fresh declaration was given. Therefore, in the case of the declaration which was effective for the purpose of the exercise of the option by the petitioner was the declaration given on 2nd Dec. 1980.

5. The order dt. 28th Jan. 1981 passed by the Assessing Authority as well as the order dt. 14th March 1981 passed by the Appellate Authority are quashed. The respondents are directed to order refund for money payments made by the petitioner towards the tax on the basis of the order of the Assessing Authority and to make the necessary adjustment towards the payment of shares for the holder of the postcard may be liable in future. There shall be no order as to costs.

Passes ordered

1981 ALL L.J. 326

(P. N. SHARMA, J.)

Ganga Das, Applicant v. The State, Opposite Party

Criminal Revision No. 1355 of 1981 D/ 24-9-1981 \*

(A) Arms Act (34 of 1959), Sec. 3, 3a, 3bb — License for manufacture of fire arms etc.  
— Obligation of returning license applicant only in a complete arm but arm to an arm which is in the process of manufacture.

(Para 17)

(B) Criminal P.C. (2 of 1974), S. 464 — Arms Act (34 of 1959), S. 25 — Contravention under S. 25, Arms Act — Non-compliance of all articles mentioned there mentioned as charge — No prejudice caused by non-compliance — Conviction cannot be upheld.

(Para 25, 26)

Ganga National, Ganga National, Para 1700, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

\*Aggravated judgment and order of the Criminal Revision No. 1355 of 1981 (Criminal Court No. 1355 of 1981).

LC/AD/CR/1355/81

Kachar Sahas for Appellate. Addl. Genl. Advocate for Opposite party.

**ORDER.** — This revision is allowed against order dt. 31.10.1962 by Sri Parasuram Kumar, learned J.M.A. Addl. Judge, Sessions Judge (High Criminal Court), Bhubaneswar, who partly allowed Criminal Appeal No. 128 of 1962. While upholding the conviction of appellant under S. 302 of Arms Act, learned J.A. expressed his grave doubts, apprehensions or well founded logical apprehensions. The conviction and sentence were usually recorded by Sri Vinodra Singh, learned J.A. Addl. Judge of Magistrate, Bhubaneswar Case No. 334 of 1961, on 14.7.1962.

2. Prosecution case was fully stated in paras 25-26 of 261 at about 3 P.M. on 31 January 1962. Bhabang (P.W. 1) & G. Bhawaraj Dasgupta had no information by whom the revision was made. On the afternoon 30.1.62, Sri Sanjay Kumar Bhawaraj along with Constables Mangal Sen (P.W. 2), Pradip Chandra Singh, Kapendra Singh and Chandra Pal Singh, raised the lower of revision in village Gaudan and found the remains of the bullet at point in case No. 334, in being it to 100 yds. He was surrounded, not molested and interrogated. Country made parcel of revolver case (Ex. 26) from his left hand and his (Ex. 30) from his right hand were recovered. Two trigger guns, 1 M82, two boxes of pistol (Ex. 3) and 4 two round cartridge (Ex. 1) and 4 round gun (Ex. 7) and 1 box body of revolver (Ex. 9) one box cartridge (Ex. 11) Ex. 13 and other Ex. 14 and Ex. 15 were also recovered from the place as detailed in memo (Ex. 8a) which were sealed on the spot and duly signed by witnesses.

3. Revisionist was referred to police station and after the report was written by Constable Ram Karam (P.W. 4) response was sent up by Investigating Officer (Ex. 3). Chandra (P.W. 2) after procuring necessary report for the prosecution from Officer Magistrate.

4. Prosecution presented two witnesses in support of their case. Apprehensions, who recalled the recovery also mentioned identified the trigger guns, above are Parasuram Kumar Bhawaraj (P.W. 1) and Mangal Sen (P.W. 2)

while the two other witnesses are found.

5. In his statement, accused revisionist denied the statement necessary and did not address any evidence in defence.

6. Both the cases below orders of the P.W. and revisionist the conviction and unsatisfactory. Approved by the court the revision has been allowed.

7. I have heard Sri Kachar Sahas, learned Advocate for revisionist at great length and Sri N. S. Raghavania, learned A.G.A.

8. On behalf of revisionist, it was presented that the revisionist (Ex. 26) Kachar for prosecution of the revisionist is a field furnished by the learned trial Magistrate, on the ground that the empty cartridge was not recovered in the said revision by District Magistrate which was substance of the application of appeal and consequently no conviction under S. 302 of Arms Act could be sustained. However such contention was unavailing as being borne the charge under S. 302 with S. 301 of Arms Act. Section 3 of Arms Act has two 34 of 1959 which was operative at the time of commission of offence read as below:—

3. Whoever for manufacture with two of arms and ammunition:—

(a) manufacture will transfer convert repair use or prove or

(b) expose or offer for sale or transfer or have in his possession for sale transfer conversion repair use or prove

Any firearm or any other arms of such class or description as may be prescribed in any notification issued by the Government in accordance with the provisions of the Act and the rules made thereunder.

9. Arms has been defined in S. 3(a) as below:—

“Arms” means any kind of any description designed or adapted as weapons for offence or defence and includes firearms, sharp edged and other deadly weapons, and parts of and machinery for manufacturing, if the law does not exclude articles designed solely for domestic or agricultural uses such as a billhook or ordinary walking stick, and weapons incapable of being manufactured than as toys

or all being non-zero non-singular  
matrices.

10. *Parsons* has been identified as a "top" of the "New York School" of the 1950s and 1960s.

"Incident" means loss of or destruction (regardless of whether it is discharge or property or propagation of any kind) by the above named applicant or other forms of energy and pollution.

18. Thus the argument employed was that Item 1 of the statement, Act which obligates a license for water for use of streams etc. is applicable only to a complete un-bridged aspect and not to an act in the process of construction.

11. The word manufacture has not been defined in the abovementioned Acts. However, it has been defined under 274 of Egyptian Act 1984 (Art. 26 [4] of 1984) in the following words:—

The manufacturer is released by an equitable partition the amount of —

11. Breaking the explosive into its component parts or pieces or breaking up or crushing the explosive or making fit for use and transportation and

the possibility of altering or improving the environment.

11. In *Seaver's Medical Dictionary Fourth Edition* at page 1020 the meaning of word *menstruation* is as follows: —

\*Manufacture (D. Thorwood manufactures in the St. Louis of Minneapolis) (20) Inc. (C. N. can be continued) as one of many ways. It may include the solution of any component, or the mode of constructing the machine. (See Fickel W. Morgan - Saward, S.L.) (E. R. The F. J. manufacture and Wilson, C.I. in N. - Whelan (20 Adm) has been generally understood to stress, rather than they make which is useful for its own sake and a credit to such, is a machine to stress, a telegraph, and many others, or to mean an engine or instrument, or some part of an engine or instrument to be employed either in the making of some previously known article, or in some other useful purpose, or a working frame, or a frame upon the running water from either or a very perhaps several shafts a new process to be carried out by known implements or otherwise using some known

instruments and elements producing some other known substance but producing a new synthesis or more complex one, matter or of matter in more useful kind. No more philosophical or abstract principle can intervene in the word manufacturing. Something of a compound and subdivided nature — something that can be made by, start from the matter subjected to the art and skill, or to the human work made of complex, practically but not art and skill, as required in such, the word







(ii) manufacture of any new long or extra long (not long 3) and inside a concentric cut with a "MARK" and at least the two ends are cut asymmetrically in January Aug 1981 (147) 35 and therefore manufacture of paper (or different?) strength which was evolved from other countries but not manufactured in these ways the reason for Noida v. Pouch, 1984) I.R. 31 2d. See the French Sugar Refinery Aug. 1982 in 120 31 3.

**H. Water Consumption Criteria**  
(Group/under Review) page 76  
commented upon: -

- 1 Manufacture by making or fashioning by hand or machinery, especially in large quantities
- 2 To work into useful form, as wood to make
- 3 To create by machine, stress likely consumer
- 4 To produce in a mechanical way, as art pieces are less spontaneous under "MACH. PRODUCTION" as it is the production of goods by and or by industrial art or processes
- 5 Anything made by industrial art, a process manufactured under collective
- 6 The making or manufacturing of anything

25. Oxford English Dictionary, Vol. 2, page 1000 gave the following meaning of "unconscious":

**Manufacture** — The action or process of making by hand, *FACTORY* is The making of articles or material (raw or a large scale by physical labour or mechanical power. A branch of productive industry. It is representative cause production of a mainly mechanical. Also applied e.g. to literary work. *it is the fabrication of false statements on a large scale for the mass for 2. 1. A person's hand physical labour or machinery. 2 Working with the hands a manual programme handbook 4 A manufacturing establishment or business. 5*

16. Murray in his *A New English Dictionary on Historical Principles*, Vol. 16, page 147 gives the following meaning of manufacture:—

- a. The action or process of making (as typified in the *Encyclopaedia Britannica*, 11<sup>th</sup> ed., 1888) or also that God made, but there he has not said earth, but actually the God made heaven and earth, the one carrying the work of manufacture and the other of a divine act.
- b. The action or process of making articles or material for modern use—on a large scale—in the application of physical labour or mechanical power.

17. Thus a mere look at the aboriginal population of area and contents of the Arma Jos document and the meaning of the word manufacture as given in the aboriginal documents makes the contents of such any any, obvious. It does not mean merely a finished product or a complete item sold to the aboriginal customers of learned counsel for the respondent that the respondent was not reasonable in the light of the position not a working document made to the ground.

18. The new content was that exchange was directly intended. However under Art 22 of Arma Jos read with S. 2 of aboriginal Act, delivery of cartridges and pouch only were intended in the change but it was not said that the accused was found manufacturing any arms or cartridges and under such circumstances no objection was reasonable without admission of the charge. Further it was argued that even in the opinion No. 1 formulated under S. 343 Cr. P.C. the aboriginal was accused of manufacturing the firearms for the aboriginal people received from his possession and it was specified in the opinion that he has been prejudiced by the charge which relates the trial.

19. I have carefully considered all these submissions which are directed at law.

20. Section 343 Cr. P.C. para No. 2 of 1874 reads as follows:—

“(1) No finding, and issue or order by a Court of competent jurisdiction shall be deemed lawful merely on the ground of any error, omission or irregularity in the charge including any misapprehension of charges, unless, in the opinion of the Court of appeal,

continuation or increase, a finding of guilty has in fact been accompanied thereby.

21. Thus it is obvious that all such irregularities have been made available in that form they are not to be the substance. Thus, in making no mention that the respondent has been prejudiced in any manner by the specification of aboriginal articles in the charge. In the opinion formulated under S. 343 Cr. P.C. to find no single opportunity to know the proper meaning and contents for such that he has been prejudiced in any manner by the aboriginal contents.

22. A mere look at S. 21 of Arma Jos, which states that the respondent was charged, shall go to declare that the aboriginal articles provided manufacturing, including etc. of any minor irregularity in comparison with S. 1 of the aboriginal Act. While referring the definition of arms and firearms in S. 2 aboriginal, it has been shown that even any part of this first one fails well within the aboriginal definition to require the respondent to the aboriginal property. Thus it is a matter of common sense followed by the court below that accused was engaged in bringing the finished weapons to the hands of his apprentices. In many articles were recovered from his possession which fully prejudiced the testimony of P.W. 1 under such circumstances, the aboriginal evidence cannot be faulted.

23. As regards the sentence, a charge is regarded as excessive by any mistake of misapprehension. However, in the respondent has already been in jail for about three months pending the trial and that sentence, the last period shall be deducted and he will have in some the remainder sentence of no months requires imprisonment more. With these observations, the sentence is sustained.

24. Thus, the objection and remedy of appeal are allowed. An order under S. 17 of 1962 is issued.

25. Let respondent surrender to his bonds and to make any remedy further to serve on the remainder sentence of no months requires imprisonment.

26. Send the record to the court concerned in the matter.

FORWARD DECEASED

1980 ALL L.J. 340

N. V. SINGHMA J.

*Dana Nash, Appellant v. Don Nason and others, Respondents*

*Second Appeal No. 244 of 1974 D. 14/3/1975*

**C. P. Consolidation of Holdings Act (5 of 1946), s. 14. — C. P. Consolidation of Holdings Rules, 1954, R. 14. — Consolidation proceedings — Compromise decree — One of the Party is complainant, minor — Legal guardian not appointed for him — Compromise is rendered void and decree, set aside.**

Where during the pendency of the plaintiff during consolidation proceedings no legal guardian was appointed by the consolidation authorities concerned and proceedings resulted into a compromise decree, non-observance of s. 14 in rendering the compromise valid and compromise decree a nullity. *Curiam dismissed.* (Para 23)

Cases Related	Chronological Page
1975 Pw. Dec 274	14
AIR 1975 All 242	20
1975 All LJ 384, 1975 All WR 78	44
1980 Pw. Dec 234	48
AIR 1980 SC 184	51
AIR 1984 SC 587	77
AIR 1983 Andh Pw 479, 1983 (2) Cal LJ 777 (P)	77
AIR 1984 Mad 89	79

*Radha Krishna, for Appellant C. B. Moha, for Respondents.*

**JUDGMENT** — This is a plaintiff's appeal decreed against the judgment and decree of Mr. V. Krishna, Judge District Court (Civil Judge), Alibababad, D. 3-3-1974 whereas in Civil Appeal No. 43 of 1974 and decreed the plaintiff's suit No. 25 of 1975 with costs.

1. Judgment and decree of trial court dt. 17-8-1970 who had decreed the suit with costs was reversed.

2. Unlawfully the record of the trial court which contained the file of Consolidation Court also could not be available as a law

book being kept as law in the Record Room of Consolidation, Alibababad. Parties filed copies of written statement, compromise etc. along with their affidavits and consent affidavits.

3. Decree relating to agricultural plot situated at village of Baram, Baram, Pargana (Baram, District Alibababad).

4. Relief sought was for setting aside the compromise undertaken dt. 8-11-1970 and to shift of the Consolidation Court and for recovery of possession of the property.

4. Plaintiff is Dana Nash, appellant. Defendant 1 is Plaintiff Nason, elder brother of plaintiff. There is another son, Chandra, P. W. 1. Issue concerning defendant 1 is Don Nason, a collateral of Defendant.

7. Plaintiff was minor during the consolidation proceedings No. 2437 (year not stated) vide Annexure B appended to the affidavit of Defendant. Plaintiff. These proceedings resulted in compromise decree on the basis of compromise dt. 22-8-1970 (page Annexure B) allowed. Plaintiff alleged that the said compromise was obtained by defendant 1 as evidence was obtained 2 by which Defendant, rights of plaintiff in plot Nos. 32-425 and 426 was given to defendant 1 who had no right title or interest as a legal guardian was appointed behalf of him, minor to carry out such compromise. Plaintiff's case was that the compromise was not approved, failed on a technical ground, hence it is set

8. Case was raised on the ground that plaintiff and defendant No. 2 was a compromise in the disputed holding, defendant had not submitted any proof and permission to file the compromise was obtained from Consolidation Officer. The claim was also barred by limitation. The suit was barred by ss. 13 (1) (4) of C. P. Consolidation of Holdings Act.

9. Both the parties below, stated that the suit was not barred by ss. 13 (1) (4) of C. P. Consolidation of Holdings Act. Both the courts below stated that plaintiff's natural guardian, son, Chandra, P. W. 1, was not appointed as legal guardian by the Consolidation Authorities. Such appointment was not available on the record. Learned Trial Court further issued the Don Nason, Defendant 1 was minor in possession over the disputed plot

ADVCTA/RC/M/TG/SQW

whether was my duty as Master or Registrar at his house or for an assigned holiday was concerned. The A. C. C. C. did not follow the procedure laid down under R. 14 of L. P. Consolidation of Holdings Rules framed under L. P. Consolidation of Holdings Act 1947 s. 2 of 1947 as amended regarding the compromise as not only illegal but a nullity and so was cancelled.

13. Learned appellate court found that as the compromise arrived at through the process that was illegal since and so the parties mutually refused their respective assignments of rights and interests of the parties in each agricultural holding. The compromise has not precluded the plaintiff's claims and so there was no sufficient reason to set aside the compromise. In the result the appeal was allowed as given above.

14. Accordingly the decision the appeal has been filed.

15. I have heard learned counsel for the parties and perused the record.

16. The single point which falls to be considered in this appeal is whether non-observance of the procedure of R. 14 of L. P. Consolidation of Holdings Act has rendered the compromise void. R. 14 stipulated as follows:—

14 (a) (i) (ii): The Assistant Consolidation Officer shall meanwhile appoint the Consolidation Committee appoint guardians for purposes of proceedings under the Act, should minor holders who are absent, absent or business under such guardians have been already appointed by order of a competent Court.

(2) The guardians appointed for a minor child or house under sub-section (1) shall be served, guardian under the natural position between minor/minor advance to the record of the survey the date order for the Assistant Consolidation Officer shall intend to appoint the guardian and shall then appoint the natural male relative of the minor the date of the house and possessing an interest therein to be in his position.

On a bare reading of provisions together with the nature of their words shall be published in the village and any person interested in the

land may file an objection against such appointment before the Consolidation Officer within fifteen days of such publication within which shall subject to the consolidation of any order by order passed under S. 45A be final.

17. The behalf of the respondents learned Advocate pointed out that Rule was not mandatory. In most circumstances did not render compromise illegal, only in the exceptional situation was placed upon (Madhav) Ram v. Asst. Director of Consolidation reported in 1973 (141 D. C. 254 which passed). —

It was submitted that R. 14 of the Rules framed under the Act imposed upon the Asst. Consolidation Officer to appoint a legal guardian for purposes of proceedings under the Act of such minor holders who are absent and whose guardians have not been appointed by an order of a competent court.

18. It is submitted that R. 14 of the Rules framed under the Act imposed upon the Asst. Consolidation Officer to appoint a legal guardian for purposes of proceedings under the Act of such minor holders who are absent and whose guardians have not been appointed by an order of a competent court.

19. It appears that in this case the petitioner's name was not recorded as minor holder but he sought possession of his share over the holding in his capacity as heir of late, Late Ramji. Opposite party contended the claim on the ground that Petitioner's claim of succession of late Ramji was not upheld by the courts below.

20. The learned advocate that R. 14 of the Rules was not observed was rejected on the ground that minor was represented by a member of his family and minor of person or a person entered over the disputed holding via minor holder and so non-compliance of the Rule was only an irregularity.

21. Learned counsel for the respondents also relied upon *Suprasit* (Madhav) Ram v. Asst. Director of Consolidation reported in 1973 (141 D. C. 254) in that case the claim was rejected by the court in R. 14

turned by force. It was held that the decree was not a nullity when it failed having jurisdiction to divide the estate except for legally decided in writing. There was no inherent lack of jurisdiction. In support of the latter statement *Public Prosecutor v. Andrea Prudente v. Mercedes Agui Bado* reported in A.B. 190, *Andia Pae 479 (191)* was also cited. None of these cases is a precedent.

14. In the instant case there is no offer of appointment of guardian by Antonio Concepcion via Officer Admendo. Private Survey was not a natural guardian of the estate at the time of filing the compromise. He was merely a de facto possessor who had no right to transfer the property of estate to Deco Rios as was held in *Abel, Solarte Rios v. De Director of Consolidation of Companies* reported in 179, *Abel 181, 18 (17)*. (200 A.L.J. 181). In this case the de facto guardian of a Rios estate had transferred the share of a mine to agricultural land. It was held that such transfer was void and nullified in *Plant 11 of Public Ministry and Guardianship Act, 1914*. Such compromise without permission or compromise the sale by the legal guardian was null and given effect in *re: Mercedes v. Juan Rios* reported in 194, *Rios 221*.

15. A similar view was held in *Ramirez v. Chaves v. Yonagui Chaves* reported in A.B. 198, *Mald 18* which observed: —

"In Civil P.C. (1904), G 28, R 7 — Compromise without permission.

"When the Court grants permission there is no compromise as of no fact at the moment are obtained and there is therefore nothing on which a decree can be passed."

16. I respectfully agree with the said observations. In *Ram Solarte v. De Director of Consolidation*, L. P. Lumbao reported in A.B. 179, *Abel 182* such compromise was entered as without appointment of a legal guardian under R. 14 in Civil (1904) P. Consolidation of Mortgage Estates (1914) which held that non-compliance of the said rule rendered the contract null.

17. In *Rios Chavito Argo v. Man Sangle* reported in A.B. 194, *SC 104* there was a decree against family without appointment of guardian. It was held that such decree was a

nullity and a suit filed in execution of the decree was void ab initio. It was observed in page 181: —

"It is again a well settled principle that, if a decree is passed against a minor without appointment of a guardian, the decree is a nullity and a void and not merely voidable."

18. This principle applies with full force in the instant case also where during the minority of the plaintiff a legal guardian was appointed by the Consolidation Authorities concerned and such compromise was simply void. The other consideration that in some other place where also got some benefits are simply evidenced and would not vitiate such void compromise.

19. In the result the appeal is allowed, impugned judgment and decrees are set aside and judgment and decree of trial court are restored. Costs of the Court shall be paid.

Appeal allowed.

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R. V. 194, 194, 1

Lola Rios, Applicant v. Argen Dae and another Opposed Parties

Card Rios, No 225 of 1994. D. 10 10 1994

14. Provincial Small Cases Cases Act (1914), S 17 — Ex parte decree — Application for setting aside — Hypothecation bond entered of deposit of the said amount by judgment debtor — Appointment of — Proper — (Civil P.C. (1904), G 28, R 12).

(Rios 12)

15. Provincial Small Cases Cases Act (1914), S 17 — Ex parte decree — Decree not made by accepting hypothecation bond executed on basis of affidavit — Affidavit not conducted in court — Affidavit offered in and open to challenge on ground of non-registration of bond. A.B. 194, *Par 14, Broughton*. (Civil P.C. (1904), G 28, R 12, Broughton Act (1914), S 17).

(Par 14)

16. Civil P.C. (1904), S 115 — Broughton — Ex parte decree — Setting aside

EC/00/000/00/000/00



of — By publication in daily judgment-debtor — Acceptance of, by judge as waiver of his discretion — High Court declines to interfere in interim (Para 10)

(D) Civil P.C. 15 of 1961, S 113 — Eviction — Finding of fact — Service of summons — Statement of person served — Disobeyed by real court — Finding as to non-service of summons by accepting defendant's statement — In finding of fact — Not to be interfered in interim. Case law discussed. (Para 17)

(E) Civil P.C. 15 of 1961, S 113 — Eviction Act (I) of 1975, S 114, III (b) — Ex parte decrees — Service of summons by registered post — No order of court as to service by registered post — Postman not named — Postal receipt submitted in date of order for return of summons — Denial of signature on acknowledgment by defendant — Court concluding absence of service of summons — Ex parte decree set aside — Opportunity afforded to defendant to be heard — High Court declines to quash voluntary return summons. Case law discussed. (Para 21)

Case Reported Chronological Para  
A.R. 1983 SC 524 (1983) A.R. 540 (1983)  
A.J. 12 985 16  
1981 A.R. 12 131 1981 A.R. Base. Cas. 168 20  
1980 A.R. Base. Cas. 187 1980 C.T. 1800 264  
1976 A.R. Base. Cas. 496-511 (SC) 21  
A.R. 1977 A.R. 121 25  
A.R. 1970 A.R. 446 (PB) 28  
A.R. 1976 Cal 375 34  
A.R. 1981 A.R. 594 33  
A.R. 1834 Pat 74 35  
A.R. 1832 Mad 594 31

Bulfinch Nagar Agarwal, for Applicant Vigna Reddy, for Opposite parties

**ORDER:** — That as a plaintiff's remedy directed against the judgment-debtor in 1973-1984 recorded by Sri Krishna Kumar, learned J.J. Additional District Judge, Ramgarh in request nos Nos 39 of 1981 by which the ex parte decree of 9-9-1980 was set aside under the application of applicant Arjoon Das under O.P. No. 13 of 1982 dated 6-12-1982 paragraph 14(a), was allowed on payment of Rs. 25/- to him to the opposite parties. The sum was returned to as original number

2. The dispute relates to the purchase of premises No. 110-110 Bhimnagar, a Ramgarh wherein the respondents had installed a rice millstone. He used to pay rent to the rate of Rs. 100/- per month. The disputed premises were purchased by the tenants and their agent who are opposite parties 1 to 3. The alienated nos Nos. 39 of 1981 was filed on the F.S.C. Code for recovery of arrears of rent and agreement. Its parts judgment and decree in that suit were set aside in para above.

3. It was received in the application under O.P. No. 13 of 1982, that the landlords wanted to rent Arjoon Das to work as cook. The sum was regularly deposited by him. Request also filed under for injunction against the landlords which was decreed on 22-10-1980 and the landlords were restrained from depositing him to, from. He deposited the sum under S. 30 of C.P. Act No. 13 of 1973 at the landlords refused to accept the sum returned to them by court order. They also did not accept the sum returned by him.

4. The applicant was kept at dark about the alienated sum and learnt about it when his intermediary Mr. Narayana Rao by Sri Krishna Kumar, Advocate who was appointed Commissioner by the court to deliver possession to Laini Raun and others. He got the sum deposited on 29-11-1982 and learnt about the deposit process on him.

5. The prayer was opposed by the decree holder on the ground that the report of the process server on the summons was correct. Applicant had full knowledge of the sum and decree. There was no compliance of S. 17 of Provincial Small Cause Courts Act and the applicant was not amenable.

6. Learned court below found that the money afforded was accepted by the court on 8-12-1982 applicant Arjoon Das was the victim of deception. He requested was immediate but not to immediately required notice but he was served the publication. Agreed by the order the request has been filed.

7. I have learnt learned request for the parties and passed the order.

8. On behalf the respondent Arjoon Das argued before me that process appended to S. 13 of F.S.C. Act was mandatory and it has not been complied with.

5. The *abandonment* was appended to 17 stamped notes —

Provided that in application for an order to set aside a decree passed in part or for a review of judgment shall, at the time of presenting the application, either deposit in the Court or account declaration under the decree or in payment of the judgment or give such security for the performance of the decree or compliance with the judgment as the Court may, on proper application made by him in the behalf here directed.

Thus the requirement was that there has been non-compliance with the mandatory provision. The provision did not include a decree offered by Agan Das, which was accepted outright by the court below.

10. Inappreciable the benefit offered by Agan Das was provisionally accepted by the learned trial judge on 12.12.1951. It was the applicant to pay the decretal amount. Para 2 of the final judgment below —

That I hereby pronounce the payment of the said amount towards the satisfaction of the decree due under the bond from my personal property, namely Raza Mahomed valued Rs. 10,000 and the said amount of Rs. 1488/- in all totaling Rs. 11,488/-

The learned trial judge observed that the original document that was ordered to be shown by respondent was actually shown on 21.12.1952.

11. Learned Advocate for respondent argued that the word 'Security' used in the said provision did not cover a personal bond as was held in *Arvindchand Vankarapale Desai* (1934) 1 C.R. 100 (S.C.). *Chandrabhai v. Kankarwadi* (1934) 1 C.R. 100 (S.C.). *Chandrabhai v. Kankarwadi* (1934) 1 C.R. 100 (S.C.). It was held that the provision was mandatory. It was further observed that there was nothing in the nature to prevent a court from accepting a personal security although it would not ordinarily do so. So the authority does not follow the typical account as was collected in the case.

12. The next authority relied upon by respondent has been reported in a Division Bench case *Indrajit Narayan v. Rajah* reported in AIR 1934 AIR 424. In that case application for satisfaction of the judgment

made the ex parte decree was accompanied with a proper to accept the personal bond of the judgment debtor. The prayer was accepted. It was held that there was nothing in the case accepted the same. It was pointed out that in such cases personal bond should not ordinarily be accepted although there was no legal bar.

13. In the instant case there was hypothecation bond and not a mere personal bond and as an acceptance by learned trial judge cannot be faulted on that score.

14. The next contention of the trial judge was unavailing. It is a matter that Raza Mahomed and Chandrabhai (son) were not indebted to each other but already bond approved in the case of hypothecation. In these events could not be treated as reasonable property so as to attract the principle laid in *Karnam v. Agan Das* reported in AIR 1934 Cal 275.

15. Learned counsel for the respondent also relied upon *Ram Narayan Chaudhari v. Shree Lal Chaudhari* reported in AIR 1929 Pat 14. In that case the security bond hypothecating immovable property filed in court was accepted, and not as it was held that such document is final. In the instant case there is nothing to record to show that the document was not submitted in such a manner of hypothecation and no required registration. Thus when the said bond had been accepted by the learned trial judge in exercise of his discretion the Court would be slow to interfere in response to an application *Datta Prasad v. Nani Rameshwar Bhat* reported in AIR 1977 All 231.

16. In *Shagun Das Arora v. Puri Ashi*, Division Bench, Bombay reported in (1932) 3 AIR 441 (B.C.). AIR 1932 SC 400. The applicant sought for setting aside the ex parte decree passed by the Court of Small Cause for non-attendance, etc. The applicant in this case 1932 moved an application under the provision of 3.19(1) of the amended Act (Preventive Small Cause Courts Act, 1927) requesting the court to permit him to give security for the performance of decree or bond for liability to deposit the decretal amount. The court permitted him to deposit Rs. 2,000/- in cash and for the satisfaction of the decretal amount to

forfeits adequate security. On 21st July 1977 the applicant moved an application under O 9 R 13 C P C regarding the court to set aside its *ex parte* decree as it happened so late it unfairly prejudiced the respondent. On 21.7.1977 the Court reported that the security bond furnished by the applicant was not duly stamped nor it was shown as an appropriate stamp paper. The court directed the applicant to furnish the required stamp within a week. The applicant complied on 5.8.1977 it was issued by court holder then there was no compliance with the mandatory provision placed in the application of applicant under O 9 R 13 C P C. was incomplete and hence as demanded. The trial court accepted the contention and declared the application as not successful because service in the district court, applicant moved again under Art. 137 of the Constitution in the High Court as substituted. It was held by the Court that as applicant failed to furnish the adequate security bond duly stamped within the period of limitation application under O 9 R 13 C P C was incomplete and ineffective. It was held by Supreme Court in para 364 (at 443 LB) (at p 177 of AIR) —

We are of the opinion that the provisions of Art. 137 should not be allowed to work hardship or impose the burden of a procedural provision on the state of law and in view of the further fact that after the limitation period of 30 days expired. Members of the Court were the members of the Court to the fact that the stamp bond was not duly stamped, the applicant, a litigant person is prejudiced on the pain of being thrown out of Court on the technical ground. Justice seems to be a thing gained by looking the law from one Court to other depending upon which side suffering more will ultimately prevail leaving a larger on the respondent and ultimately so to hold that the applicant according to the new order by a Full Bench of the High Court which did not find fault with the learned single Judge of the High Court of the State in which he resided. This was correct. The a litigant which ought not be denied.

We accordingly allow the appeal, we make the order of the trial court as well as the order of the appellate court by the learned Addl. District Judge as also the decision of the High Court and grant the application made by the applicant

for setting aside the *ex parte* decree and set aside the *ex parte* decree.

17 The next contention was that the learned trial Judge wrongly rejected the contention of plaintiff, namely Ram Ahluwalia O 9 R 13 who went to serve the summons. Statement of the Ram Ahluwalia states that he was badly shaken in court on some days about the position who made the report on the presumption that the respondent who attended that report. In the conclusion learned trial Judge believed the statement of Arjun Das that he was kept in dark about the summons or acknowledgment due relied upon by the respondent. Obviously that in a finding of fact and it was for the court to consider whether the statement was true or false in *Prabhu Chandra Gupta v. Shakti Datta* Judge Bala reported in 1960 AIR 1000 Cal 287.

18 Learned counsel for the respondent found fault with the impugned order on the grounds that signature of judgment debtor on acknowledgment due receipt was wrongly discarded by learned trial Judge. There was nothing on record to show that a note signed by judgment debtor. Learned trial Judge wrongly observed that as the character of transactions of judgment debtor were through registered post was unacceptable.

19 In the converse case were placed upon Gupta Ram v. Ram Prashad reported in AIR 1975 All 104 (1975) which held that when the registered service returning court address returned was returned with the refusal endorsement presumptions of law under S. 27 of General Clauses Act and presumption of fact under S. 114 that is Evidence Act was available to the defendant. However it was also observed that the same authority that these presumptions were rebuttable. Applicant moved his application on witness/judgment report. He also denied the knowledge of such letter. So there was nothing wrong in the part of the learned trial Judge in discarding the evidence specially when he found from a perusal of the order sheet (Statement) appeared to the way application that there was no order of the court to give process through registered post. From the order of being executed and recorded on 14-4-1981 so such service of summons or acknowledgment due in 26-7-1981 and good receipt on 30-7-1981 could not have been

entirety to the state unless sanctioned by someone else. These others do not act upon a right.

24. In *Enzo Claudia Chacoy v. Canada* (Pat Singh reported in 1981 ALL L.J. 284) (1981 ALL L.J. 284) it is held that the prosecution about service of impugned order could be successfully returned by defendant even if his statement was unreliable. This statement has been relied by learned trial Judge. So there is no legal or factual defect in the impugned order.

25. Moreover by the impugned order an opportunity was afforded to the tenant to be heard and his defence was recorded and it is held in *Enzo Claudia Chacoy v. Canada* (Singh reported in 1981 ALL L.J. 284) (1981 ALL L.J. 284) that court's discretion should be exercised in favour of hearing and not in that of finding. This is another reason for which I would decline to interfere with the order would be impugned order.

26. No other point was pressed before me in the review.

27. In the result I refuse a dismissal with costs. I refer my order of 26/10/1984 to a second, similar review at some time in the next before for quick disposal.

*Enzo Claudia Chacoy*

1984 ALL L.J. 386

B D ADARWAL, J.

*Metal Maker Applicant v. State of U P Opposite Party*

Criminal Misc. Appln. No. 1463 of 1982  
Dt. 2-11-1982

**Criminal P.C. II of 1974, Sec. 16(1), Section 143.** — Special Court of Judicial Magistrate established by State within place of sitting at Allahabad to try specified cases — Court of Sessions constituted with powers in relation to such cases transfer to Sessions Court at Allahabad. (Criminal Act 13 of 1942, S. 139.)

Where the State Government to execution of process under the process by railway, (1) of S. 11 has established a special Court of Judicial Magistrate of first class for all districts of the

State by using same order certain Magistrate with session sitting at Allahabad the Court of Sessions constituted with powers in relation to specified cases would be for Court of Sessions at Allahabad. Then where the Judicial Magistrate (Special) Allahabad requested for application of warrant, it would be for Sessions Court at Allahabad that would be competent to issue the subsequent writ application.

(Para 4)

**Cases Related Chronological Para.**

1983 ALL L.J. 386 — 1983 ALL L.J. 386 :  
AIR 1983 Allah. 147 — 1983 CO L.J. 688 :  
AIR 1983 Patna 146 — 1983 CO L.J. 1525 :

**Verdict Made for Applicant Standing Counsel for Opposite Party**

**ORDER.** — The question which the application under S. 462 Cr.P.C. has presented for determination, The applicant is a member of the House under S. 132 of the Criminal Act, 1942 (Co. L.J. 688) transferred to the Court of the Chief Judicial Magistrate Gomti Nagar. After when local jurisdiction the session was constituted. The Chief Judicial Magistrate stated that the accused be transferred to Allahabad for being produced before the Judicial Magistrate (Special) Sessions Officer Allahabad. On 26th Sept. 1982 the application for trial moved for the applicant accused was reported on merit by the Chief Judicial Magistrate (Special) Sessions Officer Allahabad. He application made transfer to the Court of Sessions Allahabad, came up as transfer to the Court of the First Additional Sessions Judge Allahabad, who reported thereon on 26th Oct. 1982 under the impugned order with the observation that the jurisdiction to transfer the applicant rests in the Court of Sessions at Gomti Nagar. The applicant has thereafter approached the Court.

2. Learned counsel refers to the notification published on Sept. 15, 1982 issued by the State Government in exercise of the powers under the process by railway (1) of S. 11 of the Cr.P.C. whereby after consultation with the Court the State Government has established a Special Court of Judicial Magistrate of the First Class for all districts of the State with all powers sitting at Allahabad to try cases arising under the enactment specified in the Schedule appended to the

and Sessions including the Criminal Act, 1932 among others. The principle well settled is that an application for bail can only be made in the court which exercises jurisdiction of the offence in respect of which the accused is arrested or detained under Police Regulations. (See: AIR 1974 Madh Pra. 17 and *State v. Sanyal Singh*, AIR 1983 Pepsu 190) This was accepted verbatim by a learned Judge of the Court in *Ratnagar Singh v. Bahadur Singh Chaudhary* 1983 All W.O. 154 (1983) All L.J. 1051. It may not therefore be denied that the application for bail by before the Chief Judicial Magistrate (Special Sessions) Korumia Offences Attached.

3 Section 14(3) referred to in the impugned order reads as under:

"Where the local jurisdiction of a Magistrate appointed under S. 11 or S. 12 or S. 13 extends to an area treated like district or the metropolitan area, in the case may be in which he ordinarily holds court, any reference in this Code to the Court of Sessions, Chief Judicial Magistrate or the Court Metropolitan Magistrate shall, in relation to such Magistrate throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Sessions, Chief Judicial Magistrate or Chief Metropolitan Magistrate, as the case may be requiring jurisdiction in relation to the said district or metropolitan area."

4 The local jurisdiction of the Judicial Magistrate (Special Sessions) Korumia Offences Attached, extends over the metropolitan of 11th Sept. 1982 beyond the District of Allahabad to which the Court is directed to hold its sittings. The reference to the Court of Sessions were made in S. 14(3) aforementioned rule and be construed as meaning the Court of Sessions exercising jurisdiction in relation to the District in which such Judicial Magistrate ordinarily holds the court. The expression "and district" appearing in section 14(3) denotes obviously the District referred to which merely the district in which the Judicial Magistrate does appointed ordinarily holds the court. The Court below has erred in overlooking this significant phrase expression.

The said District, appearing at the top end of the sub-section. The expression in the context may not denote any district other than the District referred above in the opening portion of

the sub-section, namely, the District in which the Judicial Magistrate committed consistently to hold the court. There is nothing to suggest, notwithstanding the amendment made under S. 11(1) under which the court has been created. The appeal also is contained under Section 404 in this case, the case is pending before the Judicial Magistrate (Special) Korumia Offences Attached, the Legislature may not have intended that, upon the application being rejected by the trial court, the accused has to proceed to the Court of Sessions for application in the Court of Sessions under S. 14(3) where where he may have sought the remedy had there been no special court created. The Court of Sessions conferred with the power in relation to such a case is the Court of Sessions of the District Allahabad where the case has created a contrary to law meaning.

5 Consideration being paid to the above the impugned order of 11th Oct. 1982 cannot be sustained, in my opinion. Since the court below has not received into the merits of the application made for bail by the applicant, it is imperative that the case is now considered on merits.

6 The application for bail under allowed. The order of 11th Oct. 1982 passed by the First Additional Sessions Judge, Allahabad is set aside. The court below is directed to hear and decide the application for bail moved for the applicant accused respectively in accordance with law in the light of the observation contained/hereinbefore.

7 Certified copy of the order may be supplied to the court for the purpose of payment of usual charges under 45 hours.

Future allowed.

1986-ALL. L.J. 367

N.D. GUHA, JMD  
K.K. SHUKLA, JJ

Jagjit Bahadur Saxena, Prisoner v. V.K.R. Adair, Dist. Judge, Kanpur and others, Respondents.

Civil Misc. Writ Petn. No. 34712 of 1982  
Dt. 30-09-1982

UP Highways Building, Highways of Lucknow,  
B.C.U.C. AGENT/14/10/12/2007

**Rest and Restraint Act (1972, S. 1836a) — Suit for respondent — "House Rules" — Need for accommodating daughter and son-in-law pursuant to promise made at time of marriage — It not House Rule need**

Where the husband merely denied the accommodation in question to her, as to her action regarding her daughter and son-in-law in pursuant to a promise alleged to have been made at the time of marriage of the daughter, this action is required with less than need of husband. **ABR 8974 SC 1058-80-01**

(Page 2 of 8)

#### Cases Related Chronological Page

1980 AB 1178	1
1979 CLPH BCC Clappt 78	1
AB 8974 SC 1058	2
1974 Spl. Appeal No 28 of 1974 Dr 28-2	2
1974 L40: In-Amer Inst: Add'l Dir Judge Kasper	2

1. N. Appeal, in *Protestant & P. Bishop and Protestant Kasper in Response*

**S D 0884, 2 —** The petitioner is the husband of John W. 78, 84 L. An Elder Mother, Kate Parra, Kasper. In response of the husband, the petitioner has been taken living. Other persons are not in various rooms. One of them, a Mr. John Smith, respondent No. 3. The petitioner has two sons and 3 daughters. An application was made by the petitioner under S 23-101 of the N. P. Urban Buildings (Regulation of Living, Rest and Breasts) Act 1972 that relation related to as the Act against the respondent No. 3 for release of the accommodation in the category of the ground that he would not have the ground to which the application was filed was that 3 of the daughters of the petitioner had been married in the time of their marriage the petitioner had promised that they would be provided accommodation in pursuant No 1201-42, notwithstanding 3 application the other daughter was already occupying a portion of the house occupied. The case of the petitioner was that he wanted the accommodation in the house (respondent 3) to accommodate his second daughter and her husband in pursuant to the promise made by him at the time of the marriage of the said daughter. The application was contested by respondent 3 and was dismissed by the

Prescribed Authority. The appeal filed by the petitioner was also dismissed by the S D 0884, 2. Add'l Dir. Judge Kasper responded 3. Aggravated for third order (he, petitioner first the respondent, he came up for leaving before a learned single judge. Before him, reliance was placed for the petitioner on two documents of the Case in (Rest, Chabersky v. Stas, Natus: 1980 AB 1178 and last time Stas v. B. Add'l Dir. Judge 1989 BCC Clappt 78 in support of his content as that even the requirement of the petitioner to accommodate his second daughter would constitute bona fide need of the petitioner. The learned single judge found difficulty in agreeing with the view taken in those two cases as one of the defenses of the case, family contained in S. 78 of the Act and accordingly directed the papers of the case to be laid before the Hon'ble the Chief Justice the (Judge) before a Division Bench. The two parties have been directed before in a pursuant of an order passed by the Hon'ble the Chief Justice.

2. It is being urged by the learned counsel for the petitioner that the said respondent 3 had with him a daughter of his second daughter made a promise to accommodate her and her husband in the accommodation in question, the need of the petitioner is supported by his daughter along with her husband was born before the respondent before have committed a material error of law in taking a contrary view. In support of the substance it is placed reliance on the two cases on which reliance was placed before the learned single judge notwithstanding already been affirmed in above in the case of last Judge (Judge) was held —

"The argument for non-occupation by himself does not in itself make the learned single judge in substance. If the need of both the parties 3 or the respondent 3 is not in a state and would need the company or maintenance of any other person then the need of the said other person whose maintenance he needs, would also be covered by the phrase 'family'. If the learned is denied, no accommodation required for a helper may also be considered as need of the husband. A similar result is therefore, as he maintained between two classes of cases where a husband does not need an assistance of a man, but still he wants to keep some one with him, or wants a man the need for occupation would not be that of the

independent of that which provides the relevant test. The landlord/scope his daughter and son as law to look after the business and to help a will have to be held that the requirements of these parties to have an accommodation go into with the landlord's true and real need of the landlord himself.

In the case of *Mari Chaudhary* (1988 All LJ 99) (supra) on the other hand, it was holding (p. 101) that the interests of the landlord who in that case were daughter and daughter children were residing with him since long was a relevant consideration for the Court to consider while ascertaining the need of the landlord. There is another supported opinion of a Division Bench of (p. Chaudhary, Appeal No. 26 of 1979, Sri Amar Nath v. Asha Devi Jaggi, Kangra decided on 28.1.1979) it was held :-

In the next place it was urged that the need of the landlord was held to be genuine because the District Judge in considering the considerations the needs of the members who were not the members of the family of the landlord as defined by the Act. Cl. (j) of S. 2 defines family to mean spouse, male blood, consanguineous persons, grand parents and any unmarried widow after dissolution judicially separated daughter or a maintenance dependent. In the present case the landlord is a widow. She is living with her daughter who is married. It is not in her blood line with her with her two children. The brother of the landlord's husband also is not in her blood line. In her application for tenancy the landlord stated that the mother of her husband also resides with her and a separate accommodation has to be given to her. It is true that some of the persons who are or had living with the landlord could constitute family as defined by the Act. But consideration on the finding of fact is it clear that these persons are normally living with the landlord. The landlord felt the necessity of providing accommodation to these relations of hers. Under S. 2(1)(i) one of the grounds of refusal when the building is bona fide required by the landlord for himself or any member of his family for the necessity of the fact the District Judge found that the accommodation is dependant was sufficient for the members of purpose of the landlord her relation and family members. The test is need of more accommodation. The question whether the finding that the accommodation is primarily needed by the landlord for her

occupations is relevant. The necessity of the landlord for her own more accommodation was for her occupation because the existing accommodation is hardly sufficient for her other relatives is a material and relevant consideration in order to judge the genuineness of the need or the sufficiency of the accommodation. Finally the findings of the trial collectors is relevant. It is not necessary that the last finding authority also take into account the needs of only such relations of a landlord who can constitute his family as defined by the Act. The emphasis by S. 2(1)(i) in that more accommodation is not to be given to the landlord for persons who are not members of the family but for his own need. The fact that the need of the present accommodation was increased because of the existence of her other relations is not irrelevant. The landlord could at the present circumstances put forward the plea that because of many other relations living with her she needed more accommodation for her sustenance and that came into the finding.

On a comparison of the decision referred to above and of the provision of S. 2(aj) and S. 2(j) of the Act it is apparent that an application for refusal under S. 2(1)(i) can be filed either on the ground that the building is bona fide required by the landlord for occupation by himself or by any member of his family. The term family has been defined in S. 2(j) of the Act. If therefore an application is made under S. 2(1)(i) of the Act on the ground that the building is bona fide required for occupation by any member of the landlord's family the need has to be of one of those persons who come within the definition of the term family as contained in S. 2(j) of the Act. The words for occupation by himself with reference to the landlord here, in our opinion to be construed as a manner which is commensurate with the personal requirement of the landlord. There has to come where the landlord in order to have a reasonably comfortable living, may be in need of company or assistance of a person or persons who may help him for services as a nurse, cook or domestic servant and for convenience as well as a person to get such company or assistance from a person who is a member of his family as defined in S. 2(j) of the Act, he will naturally have to look into upon a person who does not fall within the definition of the

term "family" in § 312. If one evidence is established, then it would not be possible for the landlord to have company or accommodate such persons in future without providing them residential accommodations and he is not possessed of sufficient accommodations for the purpose as appropriate under § 312(a) of the Act may be unreasonable to accommodate such person or persons in the case may be necessary as in such a case it would not be the need of such person or persons but the need of the landlord to have additional accommodations so that he may be at a position to have the company or assistance of such persons present. Such cases would apparently fall within the exception for occupancy by himself as pointed out in the case of *Int'l. House Mgmt. Corp.* and would apparently be bona fide. If the requirement of the landlord does not fall in the third category and the landlord simply wants to keep some one with him who is not a member of his family it would not be a case where the need of the landlord could be taken as bona fide. It's also not in an agreement with the requirements by the Housing Results in *Int'l. House v. Adult. Dist. Ct. Judge: Kagan* (stated that if some members of the family of the landlord, even if they do not fall strictly within the definition of the term "family" have been residing with the landlord permanently and the accommodations fall short and the landlord needs additional accommodations it would be a case where it is the requirement of the landlord for occupancy by himself. In such a case, the landlord cannot be regarded as accommodating bona fide such members of his family who do not strictly fall within the term "family" as contained in § 312 of the Act. We may however point out that the person falling in the category also have to be considered directly or not circumstances where those persons were living permanently from before with the landlord. That category will not include such cases where the landlord wants to accommodate persons who do not fall within the definition of the term "family" and has not already been living with him and whose occupancy or assistance is also not needed by the landlord as the person already related to claim an account of which it could be said that accommodating them provides the need of the landlord himself. Such cases will also not fall in the category where more relatives

of the landlord not falling in the definition of the term "family" are providing have been kept as the accommodation is required actually only for the purpose of making and a case for additional improvement. The cases along which we have given are not exhaustive and the question as to whether the need of the landlord is bona fide or not will have to be decided on the facts of each case.

3. Coming to the facts of the instant case we are of the opinion that the need of the person of accommodating his daughter is not as far as the ground that at the time of marriage a protest was made to that effect against an ability to live in a domestic situation of the categories mentioned above. *Blumfeld v. Housing Act, Adm. Div. 30, 1999* was a case where the landlord wanted a residential accommodation in the occupancy of the tenant to be relieved of his burden for the purpose of making or continuing his own business. While dealing with the parties of bona fide requirements of the landlord under the M.P. Accommodation Control Act, 41 of 1941, it was held that mere assurance to the part of the landlord that he requires the residential accommodations in the occupancy of the tenant for the purpose of making or continuing his own business is not enough. It is for the Court to determine the truth of the statement also whether it is bona fide. The test which has to be applied is as objective one and not a subjective one. The word "sufficient" signifies that more than the part of the landlord is not enough but there should be a demand of need and the landlord must show as the burden on his part that he genuinely requires the residential accommodations for the purpose of making or continuing his own business. The provisions about the bona fide requirements of the landlord under the M.P. Accommodation Control Act being in accordance with § 312(a) of the Act the principle of law laid down in the case of *Blumfeld (supra)* will apply to a case under § 312(a) of the Act also. Applying the test laid down in the instant case, it is apparent that the instant case is a case where the landlord genuinely desires the accommodation in question to be needed for accommodating his daughter and not as far as possession of a person alleged to have been made in the case of marriage of the daughter. In the case of the instant the suggested order cannot be



such as suffer either from any manifestation of law or sense of jurisdiction so as to justify jurisdiction under Art 226 of the Constitution.

4. The writ petition accordingly fails and is dismissed. There shall remain no order as to costs.

*Prayers granted.*

1986 ALL L.J. 393

B.L. TAGGAR

Molamonal Anan Prantappa v. Up. Sahasdevi Chikhalas (By Deputy Commissioner) Prantappa and others Respondents

Civil Misc. Writ Petn. No. 2072 of 1972 (B-4) (1986)

(A) Guardians and Wards Act (of 1890), ss. 20, 21(a), 41 — Order granting permission to mother who was appointed guardian, to transfer land of minor son — Vendor and party to proceedings — No final order made in transfer in obtaining permission — Order cannot be challenged after expiry of three years on commencement of consolidation proceedings (U.P. Consolidation of Holdings Act (of 1946), s. 1-A(1), (Enforcement Act (of 1952) s. 84(a)).

Where the mother who was appointed guardian of minor was applied for permission to transfer plot on behalf of minor in accordance with provision of s. 21 and permission was granted in transfer land in favour of vendor and there was no evidence to show that vendor had acted party to proceedings under s. 21 nor there was any evidence to establish that land was alienated by vendor in obtaining permission, it could not be established that it was possible for obtaining the permission and it could not be challenged by party claiming to be another vendor that the law vendor had obtained land much later after the commencement of consolidation proceedings after the lapse of period of 3 years provided under Art. 21 of Constitution Act. The order also would not be open to challenge as no appeal has been provided against such order and the same has been

made final and immune from challenge by filing application or otherwise.

(Para 6-9-14)

Further under s. 11-A(a) of the Enactment Act, there is a presumption that all the judicial and official acts have been regularly performed. There was no evidence to place in doubt the vendor ought to have obtained the order granting permission. In such situation it is difficult to say in which an application is made under s. 21 the violation of the rule of a minor's property to satisfy need by equity that the transaction is necessary and for the benefit of the minor and vendor or a vendor is entitled to rely on the order of vendor as evidence that the event had in fact occurred that the transaction is a proper one.

(Para 6-9-14)

(B) Consolidation of India, Art. 226 — Finding of fact — Enforcement with — Finding about existence permission against certain other cases and otherwise that is inconsistent with law for more than period prescribed for recording after under s. 21(a) of U.P. Act of 1951 — Are findings of fact — Same cannot be interfered with (U.P. Consolidation of Holdings and Land Reforms Act (of 1952) s. 20).

(Para 10)

Cases Related Chronological Form (1969) 3 ALJ 320 (1986) 3 WLR 375.

Chakras - Bower	11
AIR 1974 Bom 387	10
AIR 1974 All 4	9
AIR 1977 Mad 333	7
AIR 1974 All 175	7
(1981) 12 Ind App 47	10
ILR 11 Cal 379	7

N.A. Karm, for Petitioner. M.A. Qader and Mahomed Islam and Swaiding Choudhary Respondents.

**ORDER.** — The Writ Petition under Art. 226 of the Constitution directed against the action of the Deputy District of Consolidation dt. 21-1-1972 and 15-4-1972.

3. In the present writ petition the dispute is about plots Nos. 5 and 6 of village Dargapur, Prantappa and Tahsil Pains, District Prantappa. The Plots of these houses were recorded in the name of Gurdas of Chauri and after his death in the name of his son Mohan who died leaving behind his son Dargapur who

was money at the time of his death and his mother Sam. Daga had appeared in the guardian Sam Daga being the guardian appointed in the report, applied for obtaining the permission of the District Judge to make the transfer in accordance with the provisions of S. 26 of the Guardians and Wards Act 1900 thereunder referred to as the Act and that the permission was granted on 7.3.1964 and afterwards the said application made was returned on 4.12.1964 on finding of Respondent No. 1 by the Court that Raja Pal on request of Khana No. 3. Thereafter the consolidation operations commenced and a dispute arose in respect of Khana No. 3. Respondent 11 was filed an objection under S. 7 of the U.P. Consolidation of Holdings Act claiming to be entered in the revenue papers as the owner on the basis of the registered sale deed executed by him. Daga, guardian of the minor Daga, after obtaining the permission under S. 26 of the Act, started clearing the land in the alternative under S. 23B of the U.P. Zamindari Abolition and Land Reforms Act.

3. The permission on the other hand, that was obtained in reply to that of Respondent 11 was, alleging that he was not the vendor and the sale deed in favour of Respondent 11 was illegal and the names of the puttees may be entered as tenants. Respondents 6 and 7 Raja and Daga claimed to be the co-owners under in Khana No. 3.

4. The Consolidation Officer decided the case against the permission and held the order wrong including Raja, Daga and Raja as tenants of the land in dispute by order dt. 15.6.1971. The parties preferred different appeals. The appeal of the permission was allowed and was set aside on the ground by order dt. 24.9.1971. Respondent 11 by Raja and Raja Pal preferred a revision which has been allowed by order dt. 22.1.1972. The Deputy Director of Consolidation held the respondent 11 to have no right on the basis of order for permission to make certain decisions in the rights under Sec. 23B of the U.P. Zamindari Abolition and Land Reforms Act.

5. The learned counsel for the petitioner has urged that as the Deputy Director of Consolidation has held the matter to have become ripe on the date when the permission

was granted under S. 26 of the Act for making the sale in view of the permission had given under S. 26(2) of the Act, hence the permission and workableness and on the basis of such a permission no sale deed could have been executed in favour of Respondent 11. The sale deed in favour of Respondent 11 was accordingly illegal and the vendor Respondent 11 was not in position to make the deed presented and he could not have been registered under S. 23B of the U.P. Zamindari Abolition and Land Reforms Act.

6. The learned counsel for the respondent on the other hand, has urged that the permission was granted in pursuance of the procedure provided under S. 26(2) of the Act and the matter is already reported at the instance of the matter to the date of the application under S. 26 of the Act and the same was not removed from the jurisdiction. Further the matter was not equally in their proceedings and he had no knowledge about the proceedings pending in the court of permission for making sale nor he was satisfied any notice in the proceedings by reaching the permission to sell. Hence a writ would not lie and the respondent is claiming the permission to be entered as tenants. As the sale was not in order within three years from the date of its execution on behalf of the minor after minor attained majority in view of Art 26 of the Constitution Act, 1951, the claim was barred by time and principle of estoppel. Under S. 41 of the Act it has been provided that except for the result of the report being confirmed under S. 47 any other order made under the Act including an order under S. 26, having been obtained for making sale by the guardian of the minor, is void and cannot be questioned later on during the consolidation proceedings. It was also urged that the right under S. 23B has been already given to the vendor in the alternative and, hence, in his negative findings of fact.

7. Having found the learned counsel for the parties the fact point for consideration is as to whether the permission having been obtained under S. 26 of the Act by the guardian to make the sale can be challenged later in the court of the alleged fraud when in fact the vendor Respondent 11 was not a party to the proceedings and there was any evidence on record of the same indicating any fraud.

attributing to that state the proceedings for state of perjury. The second point is whether the claim of the Defendant (1) was barred by the Act. What the Learned Jc and the third point is as to who is the officer of S. What the Jc and whether perjury can be challenged in a separate suit or in another civil proceedings and the fourth point is whether Defendant (1) was within clause 3, 204 of the P. Statute. Abdulrazak and Lind Richards Jc and whether these facts are before the Jc.

4. As approach to the first point is clear that the 1990s approach under 5.29 of the Act for grant of permission is inconsistent with the procedure prescribed. The reader responded: "It was not made a party, as for his own knowledge and he had done nothing, by not allowing the permission for any course was awarded a form requested by respondents of the board of reg. It cannot be said that respondent 11 was responsible for obtaining the permission under 5.29. Also as the applicant Gargula was not a minor learner it is not open to the permission to challenge the permission obtained by the grantor. There is no evidence led by him to show that Respondent 11 the reader was under a party with proceedings under 5.29 and was not any evidence to indicate that it was contained by the reader in obtaining the permission, hence it is not open to the grantor to challenge the same after the commencement of the consolidation process. The reader Respondent 11 has relied upon the order of the Court D 73-1997 granting permission for making and for but it is not open to doubt the proceedings for any of permission."

4. Further under s. 324(a) it is stated that: "And, if it is found that a person has been injured and that the person has been injured, then the person shall be liable for the injury." This is a statement of the law, and it is not a statement of the facts of the case. It is a statement of the law, and it is not a statement of the facts of the case.

die transmission ist geringer und 1,5 bis 3,5 Mal.  
Romain Chateau, Transpactmanagement AG  
AIR 902, Wind 115, Isobell, Götting, Dorn  
Chen Chuan, AIR 904, AIR 907, Götting  
Friedrich, Mithras, 1994, 12, 1994  
App 6, 1. 1. 1994, 1. 1. 1994, 1. 1. 1994  
Rum, AIR 902, AIR 907 und 1. 1. 1994  
Jahres, 1. 1. 1994, 1. 1. 1994, 1. 1. 1994  
1. 1. 1994, 1. 1. 1994, 1. 1. 1994, 1. 1. 1994

(b) As regards the other parts of the permission to be granted on favour of the vendor, the question will be answered also in the affirmative provided that there was no intention to induce that any element of fraud can be made attributable to the vendor (paragraph 11) and once a permission was obtained and the debt has been executed, the innocent lender.

11. There is an appeal provided against an order granting permission to make and distribute copies of religious publications to make sale under § 23 or § 29 has been made appreciable in case of § 29 of the Act. An order granting permission to make or sale on behalf of the manager, or, in other kind, has not been made appreciable.

14. In *Goldman v. Howe* (1990) 3 All ER 253 at 259 (quarrel), the Court will allow the statement of a witness to stand if the witness is honest, has no real motive for lying, is of good character, and the statement is supported by other evidence. It is not enough that the witness is honest and has no real motive for lying. The witness must also be of good character and the statement must be supported by other evidence. It is not enough that the witness is honest and has no real motive for lying. The witness must also be of good character and the statement must be supported by other evidence.

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as to whether a vote of 5/40 of the Aps the validity of the order of the Council being granted provision for making such suit for challenged during consideration operations or not. It is necessary to get out the validity provisions of 5/40 of the Aps.



3. 3 of the CJPC. The second application is an application for setting aside the order of the trial court dismissing the second appeal as being time barred, and the third application is an application under O 22 R. 1 of the Civil P.C. to delete the name of the wife appellant, Nadia Ram, from the entry of the parties and to substitute the name of the applicant in her place.

2. The present appeal was filed by Nadia Ram against the widow, Jan, Begum, Dera, and her minor son and daughter.

3. Suit No. 992 of 1965 had been filed by Nadia Ram against the respondents for payment of the respondents' share of profits as well as for recovery of amount of rent and mortgage profits. Appeal No. No. 1014 of 1967 was filed by the minor son Hakeem Chaudh and minor daughter Kazi. When through their next friend against Nadia Ram for redemption of mortgage in the house of respondents in suit No. 992 of 1965 came up for hearing before the trial court, suit No. 992 of 1965 was deemed for payment of the respondents while suit No. 1014 of 1967 had the mortgage was dismissed. The judgment was delivered on 22.12.1967. Appeal No. 1014 of 1967 against the said judgment two appeals were filed before the lower appellate court. The lower appellate court by judgment dt. 28.11.75 allowed the appeal filed by the respondents and decreed the suit No. 1014 of 1967 for redemption of the mortgage. The respondents were liable to pay a sum of Rs. 380/- of mortgage money. It was further decreed that in case the respondents failed to deposit a sum of Rs. 380/- then the suit shall stand dismissed. So far as the suit No. 992 of 1965 is concerned, the decree for redemption was passed in case the mortgage money was not deposited before the court. If the mortgage money is deposited the question was not to be given effect to.

4. Against the judgment dt. 28.11.1975 a second appeal was filed in the court on the year 1975. During the pendency of the second appeal in the Court Nadia Ram died on 15th Nov. 1975. No application for revision was made in place of Nadia Ram. Nadia Ram being the sole appellant, the application should be in order dt. 21.3.80. The death certificate is stated above in 1975 but still 1980 no substitution application was filed.

5. After the appeal was allowed, all the three applications have been filed in the court on 20th Sept. 1981.

6. The issue posed which has been raised in the application for condonation of delay is that the applicants were not aware of the proceedings in the trial and of the second appeal having been filed in the High Court at Allahabad. Counsel affidavit has been filed concerning the question of delay in filing these applications. There was dispute as to as to the date of death as mentioned in regard to the facts which have moved these applications. A supplementary counter affidavit of Hakeem Chaudh has been filed to contest the application. In para 4 of the supplementary counter affidavit, it has been categorically stated that after the death of Nadia Ram the applicants also have moved the present applications in this court had also moved an application on 24th May, 1975 in the court before the vacation of the former passed in suit No. 992 of 1965 together with an application for substitution of their names in place of Nadia Ram deceased and also filed an affidavit in support of the application for substitution. A true copy of this execution application filed by the applicants who are the heirs of Nadia Ram and the affidavit of Hakeem Chaudh with in this case of the applicants have been filed in numbers 1 and 2 in this affidavit. The second application was filed for the reasons that according to the applicants the respondents had not deposited the amount of mortgage money, and consequently according to them the decree became inexecutable decree in reply to the supplementary affidavit a supplementary affidavit was filed in which the contents of paragraph 4 of the supplementary counter affidavit have not been stated. It is consequently submitted that the applicants in this court did move an application for revision that the death of Nadia Ram is not back on 24th May, 1975 immediately but the death of Nadia Ram which had taken place on 15th Feb. 1975. Then subsequently, it explains that the applicants had full knowledge of the pending case and the litigation pending in regard to the said two suits.

7. Learned counsel for the applicants has however argued that though they, due to the lack knowledge of the pendency of the suit but they

did not have knowledge of the pendency of the second appeal filed in this court. After going through various affidavits, I cannot conclusively accept this argument. It cannot possibly be believed that the applicants did not have knowledge of the pendency of the second appeal in this court. The applicants went to register their suits after representation of the death of Maria Ruiz that there was no previous application against the respondent. This application was filed through Sir Fernando Tughi Advocate. Paragraph 1 of the supplementary affidavit affidavit has been further admitted that the second appeal had been filed on the advice of Sir Fernando Tughi Advocate. The counsel who moved through this application was not moved into not responsible for filing the second appeal and in such a case he believed that counsel or counsel he did not would have informed the applicants of the pendency of the second appeal. I am, opinion the ground taken for submission of delay is unavailing and only, with a view to move the application for submission after a lapse of fifteen eight years. In the circumstances, my opinion is that the delay is not a bar to the application under O. 22 R. 9 as also for the delay in moving the submission application after the disposal of the appeal by the court on 12.1.5.1966.

7A. Learned counsel for the applicants has made necessary support of the submission of the Sir Fernando Tughi Advocate. The fact was noted upon by the learned counsel in said *Prasad Narayan v. Union of India*, AIR 1962 SC 1. Learned counsel for the applicants has relied upon the following observations made by the Madras Supreme Court:—

"The second error was that certain appeal appearing in the High Court, the respondents expected to lose a quarter century on the continued existence of parties to the appeal before the High Court which has a claim for costs both when parties in said case appear pending. And in a material case, namely the father may not have informed his son about the litigation in which they were involved and was a party. Let it be recalled when they have not expressed times that rules of procedure are designed to protect parties and should be so interpreted and not to make the respondents for pursuing every party."

8. In my opinion, the circumstances do not justify the applicants. First the question of seeking the proceedings before the High Court did not arise. The applicants moved an application for submission after the death of the deceased on 26.5.1933. They were fully aware of the proceedings. They were to explain that they proceeded to remove the driver and moved an application for submission in the court before on 24th May, 1933 that they completely neglected to take any step for moving a submission application in the High Court. These applicants are clever lawyers. They knew that subsequent appeal cases had to be filed within six months, that immediately after the death of the applicants, before they moved the submission applications in the court below. They were clearly negligent in taking steps in the High Court. It appears that they defect were the applicants in the High Court for the reasons that they thought that they were getting done, continued in the court below and will get the possession of the property.

9. The second error relied upon by the immediate relief. Latha Thiruvai Chinnai of Land, Income & AIR 1954 SC 40. In this case the objection has been placed on certain observations made by the Madras Supreme Court that in this appeal in the High Court was not only brought before the court and the court had been engaged in appeal but they did not appear for six months of the applicants.

10. In the instant case, the observations made in *Latha Thiruvai Chinnai* case would not apply because here there was no fault on the part of the respondent. The submission application had to be filed by the applicants themselves and they had to take steps for filing the submission application. It is clear that the appeal has been moved by them after all and not due to the default of the respondent.

11. I am emphatic that in the instant case, looking through the records I find that the litigation started nearly twenty a party case of the 1930's was stayed to first best good which was taken on from from the applicants father (Maria Ruiz) entering a mortgage on the property of the respondents. The respondents are a married couple and a minor daughter along with widowed mother. The court below had decreed the possession of the

amount to the applicant, father 'Nathu Ram'. There is no other right of the applicant in the property in dispute. The other respondent appears to be entitled to possess the respondent's share in joint undivided land with her children and to take possession of the house in dispute. In favour of the owner, I do not find any dispute in favour of the applicant. The money which she had paid, had discharged the property had, finally been given back by the respondent as stated by the learned counsel for the respondent.

**12.** In the result, all the three applications mentioned above, are hereby dismissed. The parties are, however, directed to bear their own costs.

Applications dismissed.

1988 ALL. L.P. 307

N. S. SHARMA, J.

Jas Muhammad, Applicant v. Tuli and others Opposite Parties

Criminal Rem. No. 89 of 1983 Cr. 104/1987

(A) Criminal P.C. (2 of 1876), s. 302 — Recording of final order — Magistrate giving reasons in preliminary order for holding that breach of peace existed — Is it not necessary to repeat same finding while recording final order?

Where it was the case of respondent himself that there was apprehension of breach of peace and police report lodged by him on this connection was also on record and he also exhibited evidence in his support and in support of the report the Magistrate had passed the preliminary order and in the preliminary order he had given the reasons for holding that breach of peace existed, he was not under necessity to repeat the same finding while recording the final order. 1988 Cr. LJ 1216 (SC) Pol. (Para 14)

(B) Criminal P.C. (2 of 1876), s. 302 and 341 — Division of Magistrate as to failure of possession in proceedings under § 341 — Reliance of evidence in support of division — High Court cannot interfere with finding of trial court. (Para 15)

Case	Reported	Chronological	Form
1988 Cr. LJ 1216	ALL 1988 SC 31		14
1978 Cr. LJ 700 (A)	1978 48 Cr. C 36		15
1977 All Cr. C 306	1977 All Cr. B 306		16
1977 Cr. LJ 858	1977 All WC 17-17B		17
1973 Cr. LJ 854 (A)			18
1968 Cr. LJ 11	ALL 1968 SC 1044		19
1968 All Cr. L.J. 31	1968 All 1968 (SC) 317		20
1967 Cr. LJ 851	All 1967 Pw 275		21
1964 Cr. LJ 711	ALL 1964 194 59		22
1938 27 Cr. LJ 491 (Lahore)			23

Present: Srinivasan and M. C. Agarwal, for Applicant. O. P. Dutt and I. M. Khan, for Opposite Parties.

**ORDER.** — This revision is directed against order dt. 24.12.1983 recorded by the District Judge, District Court, Divisional Magistrate, Bada, dated 14.12.1983 in Case No. 89 of 1983 under Cr. P.C. 302 regarding the case of respondent and returning the arrested crop and holding as breach of Tuli opposite party.

2. Three percentages were returned on the application by the respondent under § 141 Cr. P.C. with the allegation that he got plot No. 254 area 14 bighas 18 bharas of village Gaura and plot No. 26 area 7 bighas, 4 bharas and 13 bharas of village Gopapur from his maternal grandfather Gauray and was in possession thereof. Opposite parties, about 100 or more, were already and disturbed his possession and there was apprehension of breach of peace.

3. The respondent was threatened on 18-12-1980 by opposite parties who had no share in the said land, whereby — opposite parties wanted to forcibly cut away his crop.

4. Learned S.D.M. arrested respondent from police. Police report dated 29-3-1981 declared such apprehension of breach of peace. Learned Magistrate being satisfied with the report of the police, issued a preliminary order under § 141 (2) of Code of Criminal Procedure.

5. Tuli filed his written statement on 17-4-1981. He says he has possession and is in use the disputed property.

6. After appraisal of oral evidences, learned Magistrate returned the disputed crop on 14-4-1981 under Section 146(1) Cr. P.C.





final order. Once pronounced, order stands up to, the Magistrate cannot, the reason for finding that a finding of a true picture may or may not be necessary that the breach appears should continue in 2-05, stage of the proceeding unless there is clear evidence to show that the dispute has remained in such as to bring the case to the order of delivery (Civ. S. 116 order such a controversy arise, the proceedings have to be carried to their logical end culminating in the final order under part 1, Civ. S. 144. *Lawrence of Adilabad High Court Benchmarked AIR 1967 Patn 378* 1980 C.A.J. 655 and AIR 1984 Mad 51 1984 Cr. L. 1173) Approved.

Assuming, however, that there was an occasion on the part of the Magistrate to require a finding under the fact was breach of the peace, that being material to evidence would clearly fail under the domain of a suitable stipulation, which were sufficient to sustain the order passed by the Magistrate particularly when there is nothing to show that any stipulation was raised in any of the parties who had the opportunity to produce their evidence before the Court. It was therefore, not correct on the part of the High Court to have interfered with the order of the Magistrate on a purely technical ground when the aggrieved party had a clear remedy in the civil court.

15 I repeat fully follow the same view.

16 The two corners and last the quantum of sale has not been finally determined in the order of the Magistrate and the aggrieved party should not have been believed by the learned Magistrate.

17 The contention also has no legs to stand upon. Besides the civil remedies allowed by opposite parties there is no civil remedy in the Magistrate. The remedy in the revenue papers are also in their favour.

18 Learned Magistrate has referred to copies of Khata and Khata supporting the claims of opposite parties and also the strong circumstance that the respondent lived in Kargal while the disputed property lie in district Faisalabad. There was no documentary evidence in support of the possession of respondent. Finding about the possession is a finding of fact which was to be recorded by learned Magistrate. The High Court is not to

interfere with the decision of a civil court under fact of possession as long as there is evidence in support of the findings. *de Alatal* 1980 37 Cr. 43 453 Madras. The High Court does not interfere with the order under S. 145 on the merits as a whole. It interferes only in following cases —

(i) Where necessary persons were left out of the proceedings.

(ii) Where the Magistrate refused to receive evidence tendered to him.

(iii) Where the Magistrate's finding of facts regarding possession was perverse and contrary to common sense.

(iv) Where an order is wrong as required by section 145 was recorded by the Magistrate.

(v) Where the Magistrate refused to give process for the attendance of material witness.

(vi) Where the Magistrate accepted the evidence of a party and found that evidence worthy upon local inquiry or.

(vii) Where the Magistrate declared possession with a party who had long been out of possession.

19 No civil remedy is available in the case.

20 In the result, the petition is dismissed on ground of force. Reason orders in 20-1 1983 and 20-2 83 are *quashed* and *reversed*.

21 Sent the respondent the court before.  
Revised demand.

1986 ALL L. J. 119  
(LUDLOW BENCH)  
U C SEHASTHANIA J.

Zabirullah Khan, Petitioner v. P. B. Adil, District Judge, Faisalabad and others, Opposite Parties.

W.P. No. 214 of 1982 (S. 13-1982)

Civ. P.C. (S. 145 of 1907), O. 4 R. 7 —  
Amendment of written statement in appellate stage — No explanation for delay given —  
Amendment sought for vague in nature and

**Applying, opposite party, facts of case – It cannot be placed.**

The two assistant professors, Assistant Teacher at Higher Secondary School were terminated and for that a new agency was provided the records, providing the substantial in one file here and provision of L.P. International Education Act applying past exemption and was not deemed as formal of permanent work until that his termination was held to be void. The opposite party had applied against the said judgment and decree in which an application for annulment of certain portions was moved after which the defendant wanted to take the plea that the document was initiated by Plaintiff and was emergency certificate and wanted to show benefit of Art. 36 of the Constitution that the provisions of Act would not govern employment of permanent and temporary of permanent could not be held to be void. Though the application sought for was not purely a question of law and yet not a writ was said that the facts in the instant was already on record. Thus, the plea of law was sought to be taken without necessary grounds in that behalf.

That the defendant prayed for at a late stage in appeal is about any explanation for delay or as to why such plea was not taken before which was vague in nature, without any statement to the extent of proving any case even otherwise it is result in wrong injury which would necessarily constitute injustice to plaintiff and may result in depriving him of gain without of decree and of award again. Such an amendment could not be allowed. Case law discussed.

(Para 7)

For an annulment of certain portions even at the appellate stage liberally allowing the remedy as to the pending lower but such amendments could be allowed only if there is reasonable explanation for delay in making the application and the remedy only if it was not sought in the trial court already be assigned and provided after that the amendment sought for does not introduce a new case which changes the original nature of the defence and also does not work any serious injustice or disadvantage to the other side. If amendment sought for is vague and calculated to cause a fresh jurisdiction inquiry altogether as distinguished from the law subject

after annulment of certain rights in favour of the other party, which may cause serious injustice to the other party, such amendments cannot be allowed. (Para 8)

Date Received	Chronological	Page
1.7.1993 SC 235	1992-93 14 C 120	3
1.8.1993 SC 261	(1993) 4 SCC 261	3
1.8.1993 SC 266		4
1.8.1993 SC 262		2

**IN 5 Order for Plaintiff: Arjun Kumar for Opposite Parties**

**SUMMARY** – The part of the order passed by the 2<sup>nd</sup> Additional District Judge, Faridkot, allowing annulment of the writ proceedings in appeal filed by the opposite parties, being one of a suit filed by the plaintiff, a teacher in Punjab Intermediate College, Faridkot, a subject matter of challenge in the writ petition. The Additional District Judge in exercise of his revisional power rejected the amendments but allowed the other amendments proposed for by the defendants to the suit. The defendants of the suit i.e. the opposite parties have not challenged that part of the order by filing of the writ petition and the plaintiff in the writ the teacher has filed the writ petition.

**3** The plaintiff/ petitioner who was appointed as Assistant Teacher in Punjab Higher Secondary School, now Intermediate College, filed a writ challenging the order of 20-1-1993 by which her services were terminated. It was pleaded by the petitioner that the Society known as Punjab Higher Secondary School, Faridkot has its own by-laws and scheme of administration duly approved by the Deputy Director of Education and the provision of that L.P. International Education Act applied, regulations, bye-laws etc. are fully applicable to the said society etc. The suit was instituted by the defendants who contested the petition, but defended the termination order on the ground that document was forged. The writ of plaintiff/ petitioner was dismissed and order of writ that the termination order was null and void for the maintenance of wages was passed. If the document was executed and the petitioner succeeded in getting the status of salary and passed the maintenance of wages a writ concerning. The writ was after the objection was order 5-11-1993 by the opposite parties were dismissed and thereafter the appeal was filed by the opposite parties against the judgment and decree

at Luck Now. If this had been done before hearing before the Additional District Judge. The appeal was adjourned on various dates and a decree on 10 April 1952 the opposite parties are of an intention for enforcement of the entire statement in appeal. It was prayed that the respondent should be taken to the entire statement in details and they were necessary, the proper respondents should give. The main plea was that the defendants-plaintiffs being a minority association are prohibited by U.P. Incommutation Act would not govern the implementation of the persons and a majority association could not be held to be void. The Additional District Judge rejected the other respondents prayed for that so far as the respondents in question, it was allowed. It was understood, it appears the defendants wanted to claim benefit of Art. 30 of the Constitution of India. The said Article reads as follows:—

Art. 30. Right of minorities to establish and administer educational institutions.

(1) All minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice.

(1A) It is nothing but law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority referred to in cl. (1) the State shall ensure that the amount paid for or deposited under such law for the acquisition of such property or such as would not convert or abrogate the right guaranteed under this clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language."

It is stated that a withdrawal of place to meet was that there was no dispute that the institution was governed by the U.P. Incommutation Act and the Hindu and Muslim and Christian members and it was an undivided estate governed by the said Act and a majority group could be State Government. The respondents which was prayed for was not purely question of law and in the interim decree was not a word was said but the facts as that behalf were already mentioned. It appears that the defendants wanted parties

the plea though they have no claim in no money and that the respondents maintained by Muslims and was a minority institution. U.P. Incommutation Act also makes certain safeguards in respect of the minority property for minority institutions in respect of which there was no foundation even in the interim decree. There is a plea of law it sought to be taken without any necessary evidence or detail in the behalf. Some word was said that the institution was established only by the Muslims and that it was established in the interest of the community or was purely religious teaching or imparting religious education and that it was admitted by the members of the community only. During the course of arguments heard in appeal for the opposite parties stated, he also heavily was stated by the respondent Muslims and one Hindu respondent if such of the name of an English man. Thus it was established by members of Muslim community alone. Learned counsel further stated that it would not be possible to state that the same was for the benefit of Muslims and for advancing religious teaching. No word of that and respondents can be taken which may not support the case of opposite parties. Rights and protection conferred under Art. 30 of the Constitution are available only to those institutions which have not only been established by minority as understood in that Article but are also administered by that said minority community, itself or through itself in *Agarwal Bank v. Laxmi of India, AIR 1964 SC 642*.

3. O & R. 17 C.P.C. confers power on the court to allow the amendment of the pleading. This power is exercisable at any stage of the suit including the appellate stage. It means that the procedure for amendment to further or to administer substantial justice, but the same does not mean that every amendment of pleading at any stage which may not even be bona fide or be the result of some mala fide or is designed to take away valuable rights which accrue in favour of a party or is calculated to do injustice to the other party should be allowed. In *Ch. Ramdas Prasad Acharya Thakur v. Doodh, Kurum Kurum 1952 AIR 575, 581* (AIR 1952 SC 235) the Supreme Court of India observed that it was well known that the court

should be extremely liberal in granting proper amendment of pleadings unless there is equities or irreparable loss is caused to the other side, and that it was also clear that a liberal amendment ought to be granted with a discretion exercised in allowing amendment in absence of equities and in compelling circumstances. This case though never mentions that is the source of allowing amendment of pleading in extreme liberty should be observed just the same is not to be allowed if there is equities or irreparable loss, notwithstanding such facts happen. There will be no hard cases to find out across equities or irreparable loss to other party, to improve and to deplore on the face of every case.

4. In *Hay Morgan and King v. John Lloyd*, 128 J.R. 347, 10 C. 785 it appeared an application for amendment introducing a new case and for adding additional evidence under O. 41 B. 77 C.P.C. was refused. It was held that the amendment of the written statement sought in appeal was in substance what if presented would completely change the scope of evidence and facts introduced thus it was not to be received. In the meantime although something was said in the court going before the trial court but no power for amendment of the written statement and to adduce evidence before the trial court. It was three years thereafter that the plea for amendment of the written statement on such there was made which obviously would have completely changed the nature of the defence in the trial case.

5. In *Indian Bank v. State of Madras* (1959) 4 SCC 383, 12 AIR 1959 SC 331, in which number plea of the defendant was sought to be taken in the appellate stage which was rejected by the High Court on the ground of absence of necessary material was allowed by the Supreme Court. It was observed that there is no irreparable or for against an appellate court possessing amendment of pleadings or to enable party to raise a new plea, provided the appellate court observes that it all known principles subject to which amendments only being are usually granted. There should be a reasonable application for the delay in making the application making such amendments, despite in the appellate stage, the reason why it was not sought in the

trial court. If the necessary material which the plea arising from the amendments may be decided already there, the amendment may be more readily granted than otherwise. The delay in an application at the appellate stage merely, because the necessary material was already before the court.

6. That in order an amendment of the written statement in the appellate stage to be allowed, there should be reasonable explanation of delay in making the application for amendment at the appellate stage. The plea of irreparable loss sought to be adding the appellate stage of the law went to leave to the case as mentioned was laid down. Though the said case is an authority for allowing the legal plea raised by way of amendment which takes place in the case of the matter even though there may not be necessary material for the case on statement, but even the same would not be allowed unless there is reasonable explanation for delay and court accepts the same. For an amendment of written statement even at the appellate stage, liberally allowing the same can be the guiding factor for amendments could be allowed only if there is reasonable explanation for delay in making the application at the appellate stage. It was not sought in the trial court which is assigned and provided that that the amendments sought for does not introduce a new case which changes the legal character of the defence and also does not work any serious injustice or irreparable loss to the other side. If amendment sought for not vague or is calculated to have a fresh enquiry of facts and matters in nature or create a fresh and different enquiry altogether is disapproved from further enquiry after award of interest right in favor of the other party which may make serious injustice to him, such amendments cannot be allowed.

7. In the instant case it is admitted that the amendment is governed by the U.P. Intermediary Subordinate Act and if the plea of amendments duly approved by the Deputy Commissioner and no plea that the evidence is material, material, not value the amendments proposed for is a last stage in appeal without any explanation for delay or as to why such a plea was not taken before, which was right in nature, without any statement in the record of previous facts

rate must, ultimately, be to result in some type of judicially-administered compensation payment to the person concerned and not, with it depriving him of his personal liberty of choice and thus of his own spirit. The administrative procedure of summary offences cases, which could not have been allowed by way of that category which is one of the legal program cases within the prohibited form.

4. The way process is allowed and the order in 20-117 (Arrestment) passed to the 14 additional District Judge by which he allowed the opposite party to amend the original statement taking the plea that it was statutory presumption and the provisions of V. P. (Arrestment) Education Act do not apply here is quashed. No order as to costs.

Process allowed

#### 1986 JUL 1, P 301

JARASIMORA, NATH VARMA, J

For: Kurling (Opp. Applicant) + Jorge Prieto and another: Opposite Parties

Case Para. No 740 of 1984 Dr 18-21 1985 \*

Ord P.C. 15 of 1986, O. R. No. 4-4 to 4-17 (re arrestment) (Arrestment Act) (H of 1974) re Counter claim - Enforcement of - Jurisdiction of Court to my subject matter of counter claim re response within a condition precedent (Provisional Small Claims Court Act) (H of 1987), 5-22.

The clear legal position which emerges from judicial precedents as well as an analysis of R. 1-4 to 4-17 of O. R. is that of the Court is that the defendant sets up a counter claim which would not have jurisdiction over the subject matter of the counter claim (arrestment) and independent action, it shall not have jurisdiction to set aside the counter claim.

(Para 30)

Where as it was the evidence and amount of that in the Court of Small Claims the defendant set up a counter claim, charging enforcement of

and further charging that she be declared as absolute owner of the sum involved. But the Small Claims Court was justified in excluding the counter claim set up by the defendant as the Small Claims Court had no jurisdiction to grant the relief sought by the defendant. In such a case it could not be said that if the Small Claims Court did not have jurisdiction to grant the relief claimed in the counter claim in the defendant it could serve the plaintiff to be proceeded to a Court having jurisdiction to determine the civil claim (as discussed).

(Para 30)

Case Reported	Chronological	Para
AIR 1982 Mad 291		28
AIR 1978 All 11		27
AIR 1978 Cal 110		18
AIR 1977 SC 948		29
AIR 1961 South 261		16
AIR 1964 SC 11		17-28
AIR 1950 All 204		14
AIR 1945 Mad 430		13
1974 AC 402 119 LT 860 38 TLR 780		
Wolke Brothers v. Agnes Ltd.		17
1949 AC 387 104 LT 847 25 TLR 433 Bow		
Mc Lachlan & Co v. Ship Carman		12

S. V. Sharma and Jay Prakash Pandey, for Applicant S. V. Sharma, for Opposite Parties

**ORDER** - That as a defendant's petition allowed against an order granted by the learned JJ Additional District Judge Allahabad, allowing an application filed by the plaintiff-opposite parties for an order that a counter claim set up by the defendant applicant is a suit filed by the plaintiff-opposite parties be included under O. 194 R. 1-4 C of the Ord P.C.

2. The relevant facts are that the plaintiff-opposite parties have filed a suit against the defendant applicant for recovery from premises No. 28 Tagore Town, Allahabad as well as for recovery of Rs. 10,000/- (ten thousand rupees) and interest thereon. The plaintiff-opposite parties claimed that they were the landlords and the defendant was their tenant on monthly rental of Rs. 750/- Best with effect from Aug. 7, 1977 had failed to remove whenupon the plaintiff served a conditional notice of demand calling upon the defendant applicant to pay the arrears of rent in order to resume the premises.

\* Appellate judgment and order of J.S.H. Tripathi, Judge Small Claims Court, Dr 18-21 1984

3. A written statement was filed on behalf of the defendant applicants in which the defendant set out the facts and set up a counter claim charging the plaintiff. It was asserted that the house originally belonged to the defendant applicants. At the relevant time when the plaintiff was living with the house in the plaintiff, in the 27/10/1980 the defendant's only son was seriously ill as a result of which she was highly depressed and in a very distressed mental state. The plaintiff sought her nephew's confidence and took advantage of her distressed mental state. Hence the defendant's confidence and professional duty towards a mortgage deed which the defendant intended to execute for raising money for the payment of her son's hospital treatment, got a letterhead along with a deed of the same matter and a free representation letter in their favour taking advantage of the circumstances mentioned above without engaging the services of a lawyer. The plaintiff therefore under the impression that she had executed a mortgage deed in favour of the plaintiff. It was only when the plaintiff received a notice in July 23/1980 from the plaintiff demanding return of the deed and asking her to vacate the premises so that the defendant came to know that she had been defrauded by the plaintiff.

4. After taking out a claim plea the defendant claimed the following reliefs in support of the counter claim.

(a) That the Hon'ble Court might be pleased to declare the deed of transfer dt. 10-04-80 of the house in question by the defendant in favour of the plaintiff as void and null ab initio and also cancel the same.

(b) That the defendant be declared as the absolute owner of the house No. 29 Targa Town, Alibab.

(c) That in the alternative a decree may be passed in favour of the defendant against the plaintiff in the aforementioned suit and the plaintiff be directed and ordered to pay a sum of Rs. 1000/- to the defendant. 29 Targa Town, Alibab. In favour of the defendant Karlene Davis under default the mortgage be directed and given by the Court as it was noted in the case of the plaintiff.

(d) That any costs or decree and order may also be passed in favour of the defendant

against the plaintiff.

(e) That the Court may be pleased to set any order which is decreed in and proper in the suit of several parties.

(f) That the costs of the suit be awarded to the defendant.

5. The plaintiff opposite parties then filed an application (O.C) for withdrawing the counter claim set up by the defendant on the ground that the counter claim was set up in place which were wholly extraneous and beyond the scope of the suit. Further, the court which was exercising the powers of a Small Cause Court could not grant the relief sought by the defendant in her counter claim. The defendant thereafter opposed stating that the Court was fully competent to entertain the counter claim set up by her as well as to grant the reliefs.

6. The Court below considered the plaintiff's application as well as the objection filed by the defendant and by the assigned order after allowing the plaintiff's application after hearing learned counsel for both the parties.

7. Agreed by the learned order the defendant has filed the response. For the applicant (S.S. Maria) who was co-pleaded that the Court below was fully competent to entertain the counter claim. It was argued that under O. 21B. R. 64, the only limitation on the power of the court below, while a counter claim is set up is given which claimed, stating that the counter claim should not exceed the primary proceedings of the court. S.S. Maria contended that even if she framed Additional Detail Judge who was exercising the powers of a Small Cause Court as superior of the law was not competent to grant the relief claimed in the counter claim by virtue of the provisions of the Provincial Small Cause Courts Act as well as the Bengal, Agri and Anson Code Courts Act, inasmuch as all the Additional Detail Judges have an unlimited jurisdiction in the 1st primary limits are mentioned, the counter claim set up by the applicant was clearly maintainable and the objection registered by the Court below is unsustainable. Thus the Court below it was argued, has failed to exercise a jurisdiction vested in it by law in not entertaining the counter claim and excluding the same.

8. In *S.P. Gupta*, learned counsel for the plaintiff-applicant, in particular, on the other hand, argued that the court below was exercising powers conferred on it under section 25(1) of the Small Cause Courts Act and not as a Court of ordinary civil jurisdiction. It was urged that a court cannot entertain a counter-claim if it would not have jurisdiction over the subject-matter of counter-claims if used as a separate suit or counter-claim. It was submitted, being left in no doubt, Mr Gupta maintained that as a Small Cause Court is a court exercising powers of a Small Cause Court under the Provincial Small Cause Courts Act, could not grant relief for the plaintiff-claimant in a counter-claim. The court below, rightly, excluded the counter-claim.

9. For a proper appreciation of the submissions of the learned counsel it will be convenient to have a look at the relevant statutory provisions which are 5-A to 6-F of O VIII of the Civil P.C. The same are extracted hereunder:

(a). Counter-claim by defendant— (1) A defendant may set up a counter-claim by way of pleading a set off under R. 8 set up by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a debt or action proceeding to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has discovered the defence or before defence framed for obtaining judgment here, against whether such counter-claim is in the nature of a claim for damages or not.

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a set-off so far as to enable the Court to pronounce a final judgment on the same suit both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

(b). Counter-claim to be stated— Where any

defendant seeks to set up a counter-claim or to plead a right of counter-claim, he shall set forth in his pleadings more specifically than he does in the case of counter-claim.

(c). Exclusion of counter-claim— Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby made ought not to be disposed of by way of counter-claim but as an independent suit, the plaintiff may, at any time before trial, are tried or otherwise in the proceedings, apply to the Court for an order that such counter-claim may be excluded and the Court may, on the hearing of such application make such order as it thinks fit.

(d). Effect of discontinuance of suit— If at any stage in which the defendant sets up a counter-claim the suit of the plaintiff is wholly discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

(e). Defect of plaintiff in reply to counter-claim— If the plaintiff makes default in putting in a reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff or place on the counter-claim made against him, or make such order or refer to the counter-claim as it thinks fit.

(f). Relief to defendant where counter-claim succeeds— Where it is any suit or set off or counter-claim established, the defendant against the plaintiff's claim, and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.

10. R. 4A to R. 4D of O VIII have been inserted by the Civil P.C. (Amendment) Act, 1976. In my opinion, these rules clearly recognise and give a concrete shape to the existing legal position as stated by a long line of decisions with regard to the true nature of a counter-claim and the power of a court to entertain the same. The rules by expressly providing for a counter-claim and putting it at par with set-off, not merely make explicit what has hitherto been considered implicit as a result of judicial pronouncements. The new rules do not, in my view, confer any new rights or vest the courts with a power which it did not previously possess. This is confirmed by the 23rd Report of the Law Commission which reads as follows:

64. There is no printed case anywhere for the filing of a counter claim except the rule-making power in Rule 13(c)(3). The printed portion has been crossed up by *Wells* thus:

Though the Code does not provide for counter claims, there is nothing to prevent a Court from treating the counter claim as a plea of a cross — that and leaving the two suits together — provided the requests come first on the counter claim has been paid.

High Courts which various original practitioners made rules which provide for counter claims (e.g., Bombay High Court Original Side Rules, 1917, Rule 12<sup>1</sup> in seq.) have lost all the meaning that is now to be ascribed to them, as proceedings need to be kept distinct. The counter claim cannot be introduced, as was the practice formerly, in the Order for discontinuance. (Emphasis added.)

65. It is apparent that the amendments moving the dismissal rule in Order VII have been made in pursuance of the recommendations of the Law Commission.

66. Now the legal position as it existed right up to the time when the amendments were introduced in O. VII was that counter claims being substantially and immaterially a cross action and not merely ancillary to the plaintiff's action, it must be of such a nature that the Court has jurisdiction to entertain them as such and not merely ancillary to the plaintiff's action, it must be of such a nature that the Court must have jurisdiction over the subject matter of the cross claim. I read it as a separate suit.

67. This is the *Vanoverlandts Sarawak* *Straits v. Southern Sarawak* Majority. AIR 1947 Mad 400. The Madras High Court held that a counter claim may be set up only in respect of claims as to which the party could bring an independent action in the Court in which the counter claim is brought. It placed reliance on the following observations made by Lord Goff in *Williams & Glyn's Bank v. Morgan* (1914) A.C. 140:

"But the action is cross, that no counter demand is given which is an independent action for the Court dealing with the original action but also production is in the name of the counter claim."

The majority of the Madras High Court also

ought support from another decision of the Privy Council in the case of *Bank of India v. Co. v. Ship Chandan*, 1904 A.C. 497 where a question of Admiralty Jurisdiction arose and it was ruled by the Privy Council that it is an *uncontested* in an Admiralty Court a counter claim which ordinarily would not be made by an Admiralty Court could not be kept forward.

68. By the same authority the observations made by our own Court in the case of *Abdul Wahid v. Abdul Kadir* reported in AIR 1950 AllOR 1871 further hold that it was that the counter claim is of the nature of a cross action and not merely a defence to the plaintiff's claim and consequently immaterial to the defendant but no cross of action against the plaintiff and no separate action could be maintained on the basis thereof the claim put forward by the defendant could not be characterized as a counter claim.

69. In another decision of our Court in the case of *Bank of India v. Ship Chandan* reported in 1904 A.C. 497 it was ruled that a counter claim cannot constitute a claim to a set off unless such claim is made for subject of a suit would fall within its jurisdiction. Although the observations were made in regard to a set off the ratio of the decision applies with much greater force to a counter claim which is a defence but a cross-claim.

70. The Calcutta and Andhra Pradesh High Courts have also when the same issue has been concerned in the decisions cited above (see *Manoh Lal Sahai v. K.P. Chaudhary* AIR 1978 Cal 113 and *Imam Poon v. S. Khadga* AIR 1961 Andh Pra 15 Para 50). In the latter of these decisions it was observed in para 13:

"But, however, beyond doubt that a counter claim can be maintained only where the defendant is entitled to bring an independent action for the same relief as the main claim in which the counter claim is filed."

71. The Gujarat Court has observed in its decision reported in *Amalika Dayabhai Kulkarni v. Vasanth Chandra Kulkarni* AIR 1984 SC 11 that this is nothing, in law which produces a cross from being a counter claim in a plaintiff's cross-claim. It is a plaintiff's



that their observations had been made at a time when there was no specific provision for a counter-claim such as we now have in the shape of Q. VII, R. 4-A of the Civil P.C. It is apparent that if the counter-claim is to be treated as a cross-claim, the case in which the same is filed must obviously be competent even if the counter-claim is made in response to it. In the Court that first jurisdiction was the subject matter of the counter-claim.

18. A review of the various authorities dedicated above that clearly leads to the conclusion that this court is wholly competent to try the case if first made independent action is well within competence to make the counter-claim. There appears to be a complete symmetry on that legal controversy among the various High Courts.

19. That a counter-claim is in essence a request has now been given a statutory recognition by the Legislature in the shape of R. 4-A in P.C. of Q. VII, Subrule (2) of R. 4-A makes explicit what had been hitherto implied and by judicial precedent it seems that a counter-claim shall have the same effect as a cross-claim. Subrule (3) also leads to the same conclusion. It provides that the plaintiff shall be at liberty to file a counter-statement in answer to the counter-claim of the defendant. Finally subrule (4) of R. 4-A makes the legal position abundantly clear by providing that the counter-claim shall be treated as a plea and governed by the rules applicable to pleas.

20. Regarding R. 4-A of Q. VII as its entirety it is clear that the counter-claim shall be treated as a cross-claim and all the rules applicable to such a matter should apply to a counter-claim. It must, therefore, follow as a necessary corollary that the Court in which a counter-claim is filed should be a court which has jurisdiction over the subject matter of the counter-claim if filed as a plea.

21. The same conclusion flows from R. 4-B in P.C. of Q. VII. R. 4-B states that counter-claim may be provided with evidence out of the pleadings, depositions or documents. Thus in the present case even if the claim of defendants falls the Court below shall have to proceed with the counter-claim of the

defendant applicant, which will lead to the conclusion that it is through the Court below maintaining the powers of Small Cause Court's jurisdiction as an original court was, paid to the counter-claim. This would not have been acceptable to the Legislature.

22. Now, there can be little doubt that the Court below was trying the case as a small cause. The case had not come to the life of the learned Additional District Judge on the regular roll brought by virtue of having been set aside with the powers of Small Cause Court. And it was not disputed by the learned counsel for the applicant that the learned Additional District Judge, exercising the powers of Small Cause Court consisted great care of the reliefs claimed in the counter-claim set up by the applicant. When the learned counsel for the applicant submitted that in order for the Small, Additional and Civil Courts and the Additional District Judge enjoyed powers of unlimited preliminary jurisdiction, the court below was competent to entertain the counter-claim even if it may not be otherwise competent to grant the reliefs claimed by the defendant applicants in the counter-claim. In the counter-claim, the defendant applicants had claimed the relief of declaration that the deed of transfer of, Dec. 10, 1947 executed by her as lessor of the plaintiffs by defendant constituted void in case and, in the alternative, the plaintiffs be directed to execute a sale deed in respect of the house as depend on terms of the defendant applicant. The applicant had also prayed that she be declared the absolute owner of the house in suit. It is undisputed that none of these reliefs could be granted by a Small Cause Court. Nor could it adjudicate the complicated questions of title raised in the counter-claim. It is thus clear beyond doubt that if the counter-claim had been filed as an independent action before the court below which was exercising the powers of a Small Cause Court as the counter-claim court below would not have had jurisdiction to try the case. Following the decision that came at the decision cited above with which I am in complete agreement I hold that the court below ought to exclude the counter-claim.

23. For the applicant, however, Sri S. V. Mani placed strong reliance on the proviso to R. 4-A of Q. VII and contended that the only time when the Legislature intended to place

on the jurisdiction of the Court to entertain a counter claim is that it shall not exceed the prayers, terms of the petition of the court. Learned counsel submitted that all that was required to be established by a defendant setting up a counter claim is that in the petition of the court a counter claim was therefore should be a right or claim in respect of a cause of action accruing to the defendant against the plaintiff and that the counter claim should not exceed the prayers, jurisdiction of the Court.

24. I am unable to agree. The prayer in R. 6-A is not, in my opinion, exhaustive in the sphere of the jurisdiction of the court to entertain the claim. The prayer merely states respect what has been before the court, namely that the Court below "took the counter claim into account" have jurisdiction over the subject matter of the counter claim including necessary jurisdiction. Further rule 10 of R. 6-A does not purport to define the jurisdiction of the Court below which the counter claim can be set up. As mentioned above, it merely states an explicit provision for a counter claim by a defendant which right was previously granted not only by judgments/lawyers referred to and discussed above. Further the requirement of the Vice ignores the other sub-rule of R. 6A, particularly sub-rule (2) which makes it abundantly clear that the counter claim shall have the same effect as a counter and sub-rule (4) which states that the counter claim shall be treated as a plea and governed by the rules applicable thereto. These sub-rules clearly affirm and give statutory recognition to this ruling rule that the court must have jurisdiction over the subject matter of the counter claim.

25. In *Mathuram* placed reliance on S. 23 of the Provincial Small Cause Courts Act which states that a court of small causes shall have the power to be possessed as a court having jurisdiction or otherwise the plea which the court finds that the right of a plaintiff and the relief claimed by him depend upon the grant or disposal of estate to immovable property or other title which only a court of small causes can grant. It was equally the learned counsel there as I, therefore, a Small Cause Court had sufficient jurisdiction, given the facts claimed in the counter claim by the defendant applicant

it could retain the plea to be possessed as a court having jurisdiction to determine the title.

26. The argument does not appeal to me. Sec. 23 of the Provincial Small Cause Courts Act, 1906, does not, in my mind, show any right which is to be determined. It does not directly or indirectly state the nature of the locus of jurisdiction of the court to entertain a counter claim. It merely provides that when a plaintiff set up a right which depends upon the proof of a title to immovable property, the court may, at any stage of the proceedings, entertain the plea. This does not, however, limit to the jurisdiction of the court which a Small Cause Court can set up have jurisdiction to entertain a counter claim by the defendant or a counter claim set up by the plaintiff. Small Cause Court the latter shall entertain the same and proceed to determine finally the completed question of title to immovable property. In my view, far from supporting the applicant's contention, S. 23 supports the same and reinforces that a Small Cause Court cannot entertain a counter claim if a complete parcel is disposed of a title to immovable property which is already finally determined as a suit of the nature of small cause.

27. I shall now briefly deal with the submission made by the learned counsel. The first doctrine cited by the learned counsel is reported in *Yaduvanshi Lohia v. Alakshat Bhat*, AIR 1979 All 17. It is difficult to know the circumstances of the case in the applicant. In this case the defendant is a suit filed a written statement making a counter claim therein along with an application to sue for counter claim in forma pauperis. The lower court had rejected the counter claim on the ground that no court fee having been paid in the counter claim the same was not maintainable. The Court held in a revision that against the order passed by the lower appellate court that amount as order R. 6A(2) a counter claim has been given the effect of a counter suit, the same statement filed by the defendant making a counter claim had not been suspended within the purview of O. 22(2)(b) and hence the court below was bound to consider the defendant's application for relief to sue in forma pauperis. It could not have rejected the counter claim without disposing of the application.

29 The third case relied on by the learned counsel as reported in AIR 1984 SC 1118 says: "The members do not support the application because it is merely a collateral matter which has to be treated as a cross claim."

30 Another decision cited by learned counsel is reported in TILVS India proceedings (2001 v. M/S. Kinnasarekhan, AIR 1981 (14) 190. This case is of little assistance in resolving the controversy. It merely holds that a counter claim cannot be prepared from the disposal of the main suit claimed but must be considered as being co-extensive, i.e. it should be viewed as part and parcel of the suit. The decision does not consider details, or in explanation the main suit which I am concerned. Likewise, another decision relied on by the claimant reported in Mohan Singh Singh v. Dera Baba Jagatpur, AIR 1972 SC 1044 (para 14) lends no assistance. The decision merely reiterates the existing legal position, namely, that a counter claim can be treated as a cross claim.

31 To run up the clear legal position which emerges from judicial precedents as well as an analysis of the provisions of O. VIII is that if the court in which the defendant sets up a counter claim, would not have jurisdiction over the subject matter of the counter claim of fraud, it is separate and independent action, it shall not have jurisdiction to entertain the counter claim. This being so, the court lawfully concluded the counter claim set up by the applicant.

32 It is however, made clear that the objections which have been made as the subjects are contained in the legal controversy whether the court below had jurisdiction to entertain the counter claim set up by the defendant and the Court should not be taken as having impermissibly, opinion could entertain the counter claim of the applicant.

33 In the premises, the counter claim need not be dismissed with costs. The counter-claim is hereby vacated.

(Narinder Deva J.)

# 1995 AIR 1, 1 195 OIA PRAKASH, I

Case No. 1048 of 1994, Special Appeal, Harish Chaudhri and others, Respondents.

Second Appeal No. 514 of 1974 (D. 1 to 1981)\*.

(44) **Lawrence Joo** (26 of 1963), Art. 64 — **Adverse possession — Claim of — Possession must be adverse to knowledge of real owner.**

Adverse possession can be claimed only against the real owner. To claim adverse possession one has to establish that the hostile possession was to the knowledge and to the detriment of the owner of the land. It is not sufficient to say that 12 years' adverse possession was recorded in the court that the party claiming title by adverse possession had his predecessor in title concerned in exclusive possession of the real land to the knowledge of the real owner, unless the court itself observed that none of the party, appeared to be sufficient to prevent it in court of all other persons except the real owner. It means that the party did not exercise exclusive possession against the real owner.

(Para 11)

(45) **Lawrence Joo** (26 of 1963), Art. 64 — **Adverse possession — Carrying on stall of making and doing of goods in other's land and occupying it is Court, despite, without knowledge of that owner for purpose of taking loan — Does not constitute adverse possession.**

(Para 12)

(46) **Civil P.C. (5 of 1908), Sec. 100, (B) — Finding of fact — Suit for possession — Government finding of lower Courts that defendant and his predecessor-in-title were never in possession of real land — Finding being finding of fact has to be accepted as correct finding.**

(Para 13)

(47) **Specific Relief Act** (37 of 1930), Sec. 5, 6 — **Suit for possession on basis of proprietary title — Claimant failed to adverse possession by occupying title — Relief suitably sought being specific claim, can be granted — Civil P.C. (1 of 1908), O. 1, R. 5.**

\*Aggravated petition and decree passed by District Court, Coimbatore, Civil Judge, "Mangalore, Dr." 18.1.1979.

1995 AIR 1, 1 195

It is well-settled that when a title claim is claimed, small title can always be granted. On the same analogy when a bigger claim is set up, the smaller claim can always be considered. (Para 7)

When the plaintiff filed a suit for possession, results on the basis of possession title has only, apparently, the plaintiff was succeeded and the claim was shifted from proprietary title to adverse possession, then even if the plaintiff failed to establish title by adverse possession, the judicial pronouncement is granted on the basis of proprietary title which title right of adverse possession. The plaintiff has filed a suit for possession and the case is maintained on the basis of proprietary title if not on the basis of adverse possession. (Para 7)

(E) Specific Relief Act (VI of 1949), Sec. 6, i — Suit for recovery of possession — Plaintiff proving his prior possession or proprietary title — Suit is maintainable against defendant who has taken to possess better title — Proprietary title is good against everybody except the true owner — Suit for possession filed beyond ten months but within 12 years — Not barred, (Cassamatta, Art 156 of 1961), AIR 1961 SC 546 and AIR 1962 SC 1168, Rel on. (Para 7)

Cases Cited	Chronological	Para.
AIR 1951 SC 546		7
AIR 1961 SC 1168		7
AIR 1964 All 203		5
AIR 1964 Civd 456		5
AIR 1965 All 141	FROM AIR 1957	5
1965 AIR 28 Bom 228		

Santhosh Prasad, for Appellant G C Chandra, for Respondent

**JUDGMENT** — This is a second appeal against the judgment and decree dated 15-2-1974 of the learned Civil Judge, Muzapur coming out of a suit filed by the plaintiff respondents for recovery of possession of the suit land as described at the foot of the plaint.

3. The plaint says that the suit land is situated at plot No 4275. The plaint was recorded. Before amendment, the plaintiff obtained proprietary title over the land in suit. After the amendment, the plaintiff claimed to have acquired ownership by adverse possession. The plaintiff claimed that he had perfected

the suit land under a title deed in the year 1958 from one Chhota Lal who acquired the same under a Sale in the year 1948 from the Raja of Marapur. Proceedings under S. 14-C of P.C. were initiated by the plaintiff when the defendant No. 1 made an attempt to dispossess the plaintiff on the basis of the title deed S. 14-C of P.C. which was returned to him favourably by the defendant No. 2. The said proceedings were quashed on the basis of the defendant No. 1, stating that the proceedings under S. 14-C of P.C. would adversely affect his title, title of another plaintiff filed through for recovery of possession against the defendants.

4. The suit was moved by the defendant No. 1. He claimed his own title and possession over the suit land. It is admitted that the suit land is situated at plot No. 4275. The learned Muzapur court of first instance and held that the plaintiff had acquired owner of suit land by virtue of adverse possession. He also held that the pretensions of the plaintiff namely Chhota Lal was also the owner of the suit land. The learned Muzapur, however, took the view that the Raja Marapur was not the owner of the land in suit and the suit was initiated to recover any land in respect of due to Chhota Lal. The title and possession of the defendant No. 1 and his pretensions were negated by the learned Muzapur. The dispute was then started as against the defendant No. 1 in the appellate court. Then the learned Civil Judge held that the learned Muzapur was wrong in holding that Chhota Lal was the owner of the suit land. He, however, affirmed the finding of the learned Muzapur that the plaintiff was the owner of the suit land by virtue of adverse possession. It was held by him that neither the plaintiff nor the defendant nor their pretensions had any title in the land. It was also held that the possession of the plaintiff and of his pretension was sufficient as against to master of all other persons except the real owner and, therefore, the plaintiff had perfected his title by adverse possession against the defendant and all others except the true owner. Thus, by the appeal of the defendant was dismissed. Aggrieved by the suit order, the defendant No. 1 has come up in second appeal.

5. The learned Civil Judge recorded for the parties of considerable length. Learned counsel for the appellant contended that the suit land

was long known before the defendant No. 1 started construction thereon and, therefore, the nature of possession as claimed by the plaintiff could not establish the adverse possession. Thus it was argued that the plaintiff having been awarded striking the case from jurisdiction, fails to achieve possession. The plaintiff could not succeed in second appeal on account of possession title and that the plaintiff can succeed only when the adverse possession is successfully proved by law. It was also argued that the defendant No. 1 is his predecessor but no title or possession is the suit land is proven. On the other hand, the plaintiff respondent succeeded his adverse predecessor but the suit land. It was also argued that at any rate, the plaintiff has not improved against the defendant who has no title to the suit land, on account of his prior possession or proprietary title. So the plaintiff is disqualified to sue. —

1 Whether the facts before rights held that the plaintiff acquired the ownership in adverse possession over the suit land?

2 Whether the plaintiff was in prior possession or acquired proprietary title and, if so, whether he is entitled the suit on that ground?

3 Both the courts below recorded a consensus finding that the plaintiff acquired adverse possession. Ordinarily, a consensus finding given by the courts below deserves to be accepted. But the finding of the learned Civil Judge on this point appears to be inconsistent or incongruous, therefore, an additional finding there is a consensus finding of the courts below on the issue of adverse possession which has to be accepted. When the learned Civil Judge has held that the plaintiff and his predecessor prior to Chhota Lal took remained in possession over the suit land and

the suit alleged by the plaintiff and his predecessor is not appears to be sufficient to amount to ouster of all other persons except the real owner and, therefore, in no opinion the plaintiff respondent has perfected his title by adverse possession as against the defendant respondent and all others except the real owner. — Adverse possession can be claimed only against the real owner. To claim adverse possession one has to establish that the hostile possession was to the knowledge and without

of the ownership of the real owner for more than 12 years, the finding has been accepted by the learned Civil Judge that the plaintiff and his predecessor in title remained in exclusive possession of the suit land to the knowledge of the real owner. Unlike the Civil Judge himself observed this case of the plaintiff appeared to be sufficient to amount to ouster of all other persons except the real owner. It means that the plaintiff had his continuous adverse possession against the real owner. When the learned Civil Judge wanted to hold in this the possession of the plaintiff gave rise to proprietary title which was good against every one except the real owner. This finding cannot amount a finding of adverse possession but there is clearly a finding of proprietary title. It appears that the learned Civil Judge wrongly used the expression adverse possession having intervened by the plaintiff. Otherwise also, there is nothing on record to support the adverse possession of the plaintiff. The only finding that came before the courts below was that the Chhota Lal used to carry water and柴草 and used to dry provisions on the suit land. So far as the plaintiff is concerned, the courts below observed that he had managed the land as well as the Income Department of Local Panchayat having taken a lease of Rs. 4000/- on 12.1.1944 and then he got a mortgage loan of Rs. 10,757/- (10757/-) which he retained in his favour from the department. The question is whether on the basis of the evidence it can be said that the plaintiff acquired adverse possession. Relying on the case of *Lachhoo Nath v. Bhaba*, 1938 All 194 All 383 which was cited by the defendant, the learned Civil Judge took the view that for determining the question of adverse possession, the court has to take into consideration the facts of each case and the circumstances under which the right of adverse possession is claimed and then considering the possession of Chhota Lal and of the plaintiff he held that the suit was sufficient to amount to ouster of all other persons except the real owner. Before deciding the question whether on the basis of the possession of Chhota Lal and the plaintiff, the learned Civil Judge was right that the plaintiff acquired adverse possession, it is essential to look at the suit law pertaining to adverse possession. In *Prang Cursey v. Goudan Malhotra*, 1903 3 L.R. 26 Bom 28, the facts showing adverse possession proved to have existed on the land in dispute

paths, and sheds for cows, goats, birds etc. and a hut for Chintamani etc. however, structure of a family and goods temporary character. It was held that such use of the land by itself was insufficient to support a title through adverse possession. It was observed: —

“...Legs of the tree under similar circumstances, a monkey in this country and similar to the particular incident. It is further observed to denote or understand as denoting in the one side or the other a claim to the ownership of the land, and where this, and no more, is the case it would be wrong to hold that a claim by adverse possession has been made.”

The above statement was followed by a Division Bench of the Court in *Andaman & Nicobar Islands (AIR 1957 1 SCR 441)*. The Court, *ratum* there is as follows: —

The mere rearing of cattle and storing of logs and the construction of foundations of a house bigger than ones built, but not visible on the surface on a piece of waste land, is no indication of possession which is attracted to the adverse as the rule of the proprietor of the land.

In *Uphal Ad v. Hompraj-Qader* AIR 1941 Outh 64 the Division Bench observed: —

Where after the killing of a deer and using for a long time the dead animal the appearance of a large stone with a dial bounded on all sides by the fences of the neighbours evidence of possession by the adverse possessor, (members of the said deceased family) in rearing of cattle using the land as a playground, cooking food on occasional occasions and even placing cows (cattle) possibly across the nose of the real owner even if he be living in the same area, such use would not constitute adverse possession against him for he has been living away from the land since a long time.”

5. From the above authorities, it is clear that the plaintiff could not acquire title by adverse possession properly because his possession covered on Tod (bamboo) and dried woodlands on the wet land and he himself occupied the wet land to the Industry Department without the notice of the true owner (the Government) taking him. So, after from the record and from the finding of the learned Civil Judge, it is established that the

adverse possession was not made by the plaintiff and his predecessor in title against the real owner. Therefore finding of the learned Civil Judge that the case of *Chikun Lai* and the plaintiff appeared to be sufficient to entitle the owner of all other parties except the real owner cannot justify the rule of the plaintiff by adverse possession, even though he has held so.

7. Then the question is whether the plaintiff was in good possession of or whether he acquired possession title over the wet land? Before the events before concerned found that the defendant and his predecessor in title were in adverse possession of the wet land. The finding has to be accepted being a finding of fact. However the finding is fully supported by the record. Enough evidence has come that the plaintiff and his predecessor in title *Chikun Lai* remained in possession over the wet land. The plaintiff himself had occupied the wet land even after the Industry Department of the U. P. State Government on 12.1.1961 and then got the record gazetted dated 28.7.1971. This is. The evidence fully established the adverse possession of the plaintiff or his predecessor title. Then the question is whether the plaintiff can acquire the title on the basis of his possessory title. The submission of the learned counsel for the appellant is that initially the case was filed by the plaintiff on the basis of possessory title but later the claim was amended and claim was deleted from possessory title to adverse possession, and, therefore, the plaintiff can succeed only when the adverse possession is established. I do not go, say later in the submission. There is still a valid law when a bigger relative claim, small title can always be granted. On the same analogy when bigger claim was set up, its smaller claim can always be considered. The plaintiff claimed the relief of possession on the basis of the adverse possession. Even after plaintiff title to establish adverse possession, the relief of possession can be granted on the basis of possessory title which falls short of adverse possession. The plaintiff has filed a suit for possession and that can be maintained on the basis of possessory title if not on the basis of adverse possession. There being a concurrent finding of fact of the court below that both the plaintiff and the defendant did not acquire title to the wet land and defendant having successfully proved his

prior possession or possession, into the wrong possession is based on evidence against the defendants, who has failed to prove a better title than the possession, into the plaintiff's. In support, King possession is, under sufficient to enable the plaintiff to ask for possession against the defendant, who cannot prove his prior title. In other words, possession, into a good against each other, except the defendant. The only requirement of such a suit would be that the plaintiff should be able to prove his own exclusive possession, over the property, and the suit must be brought within 12 months from his dispossession from the same, as envisaged by Art. 46 of the Limitation Act, 1971. *See* *Northon Harrison v. De S. P. Raja*, AIR 1975 SC 466; the Supreme Court ruled that the Art. 9 of Specific Relief Act, 1977, upon Section 6 under the new Act, 1977, is a way consistent with the position that an equities is a strong title, prior possession of the plaintiff, as an instance of acquisition, is sufficient title even if the suit is brought more than 12 months after the actual dispossession/complaint of and that the wrong done cannot successfully resist the suit by claiming that the title and right to possession are at a third party. Therefore a person, having possession, who can get a declaration that he was the owner of the land in fact, and not otherwise, relieving the defendant from ever having had his possession. It is therefore clear that a suit for possession, can be maintained on the basis of possession title even after the expiry of the period of 12 months. *In* *War Service Society Ltd v. E. C. Alexander*, AIR 1965 SC 1460 the Supreme Court observed that the owner's possession within 12 months of the Specific Relief Act is sufficient, the plaintiff need not prove title and the suit of the defendant does not stand. When however the period of 12 months has passed, questions of title can be raised by the defendant and if he does so the plaintiff must establish a better title or fact. In other words, the right is only continued to possession only, as a suit under Art. 9 of the Specific Relief Act has therefore not a suit on prior possession within 12 years and title need not be proved unless the defendant can prove that his own possession is not based on fact but only on title within 12 years and in such a suit based on possession title, the plaintiff is not entitled to prove any title unless one is proved by the defendant. The defendant has failed to prove

any title, the plaintiff's suit for possession will stand, succeed on the basis of possession. It is not a title supported by facts and so the subject and object of the learned Civil Judge deserves to be confirmed subject to the modification that, not on the basis of adverse possession but on the basis of the possession title, the plaintiff is entitled to the decree of possession in respect of the suit land.

8. The appeal is therefore dismissed accordingly with costs. The judgments and decrees of the learned Civil Judge, 14-2-1974 are confirmed subject to the modification upon the suit of the plaintiff for possession, it shall be decreed on account of possession title and not on the basis of the adverse possession.

Approved (Signature)

1986 ALL L 1 373

V. K. VERGOTRA AND V. K. KRISHNAJI

Wygner, Mendel Sofer, Nathan v. Nager, Polina, Nathan and another (Defendants)

Civil Nos. 104 and 105 of 1985 (2/1/1986)

(14) U.P. Municipalities Act (2 of 1946), Sec. 124 and 125 — Objections to proposals to levy tax not considered on merits on ground that they had not been filed within time — Such non-compliance, will not vitiate levy 1974 AIR 14 20 (SC) Ref. on. (Para 12)

(15) U.P. Municipalities Act (2 of 1946), S. 124(2) — Resolution of Board directing suspension of tax — Non-consideration of specific date in resolution with effect from which the suspension operated — Levy and arrears of other point of commencement of levy can be definitely known having regard to language used in resolution. (Para 22)

Cases Related Chronological Form

1973 AIR 121	AIR 1973 SC 206	1978 Tax
14-2-1974		12-11
AIR 1978 AIR 110		9
AIR 1978 AIR 304		9
AIR 1978 AIR 30		8
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they were inconsistent with the model provisions and both proposals that were proposed were being published, stating otherwise within 15 days of the date of publication. The objections were filed within the period.

4. On 4 April 1961 a general resolution under section 126(1) of the Act adopted as copies of these proposals was submitted to the Municipal Auditor in terms of the District Commissioner's Mandated Design for drawing up public accounts within 15 days of the Act. Amendment 5 A to the same effect as that of the resolution.

5. From paragraph 7 of the writ petition it appears that the State Government had directed on September 9 1961 the Municipal Board that proposals for amendment of provisions of the Act in the form of an amendment should not be considered as one of the objections to Local Bodies which were likely to be held soon. The direction was issued on March 30 1962. On March 31 1962 resolution was made by the State Government in view of poor financial conditions of Local Bodies. The resolution contained CA 11 in the Council of the Municipal Board on November 20 1961 by Jnan Krishna Prasad. On May 31 1962 the Administration of Nabam Municipal Board advised the Commissioner through letter No. 54/19 to the Commissioner of Nabam local reporting him to direct publication of the proposal submitted to him under. On June 18 1962 the proposal was published by the Commissioner in the L. P. Government gazette within a month. A copy of the publication is annexed to the writ petition. On July 29 the Administration passed a special resolution under section 126(1) of the Act stating that the norms that will be imposed on the Board from the date of its publication in the official Gazette. A copy of this resolution is annexed to the writ petition. A copy of the supplementary counter affidavit sworn by the Board is annexed to the writ petition. On August 17 1962 the resolution of July 29 was forwarded to the Commissioner for publication and as it was not made the proposal was finally published in the Official Gazette on October 6 1962.

We have heard Sri P. K. Bhowmik for the petitioner and Sri S. C. Bhattacharya for the Municipal Board as well as both of them before making the judgment made by them

on the merits of the petition we would find that with the plea that the respondent Board was not entitled to be heard by us for so long as it did not give notice of contempt.

6. In Nabam the plea for objection that On November 23 1961 the Court after considering the detailed facts stated in the affidavits submitted by the parties at that time and having considered both the parties' pleadings in order to say that although it will be open to the respondents to appear and to file facts in accordance with law they shall accept effect to the satisfaction of the court published in the L. P. Gazette dated October 6 1962. On December 1 1962 an application was made to the Municipal Board to recall this order. On January 18 1964 Mr. Justice B. N. Sanyal, who had passed the order under which the parties were to be heard finally in terms of the order under which the order was passed. On March 20 1964 the petition was dismissed for want of prosecution as the Court did not say anything specifically about the construction or otherwise of the order under. The petitioner made an application on April 2 1964 for recalling the order of dismissal and on April 15 1964 the application was allowed. The writ petition was resumed in its original form. On May 1 and 2 1964 the petitioner represented the Petitioner's affidavit and the Executive Officer of the Board asking them not to change the order for the writ petition as it was not open to the court. The writ petition was resumed by the Board on May 18 1964. The application resumed in its original form No. 187 of 1964 was then filed by the petitioner for punishing H. K. Prasad the Officer-in-charge and the Executive Officer and on May 24 1964 another application was made for taking notice of contempt on the respondent was pending in its terms. This was resumed in contempt case No. 192 of 1964. Charge was framed by the Court against the Officer-in-charge on August 14 1964 and on August 26 1964 notice was also made in the Board to show cause why a should not be punished for committing contempt of the Court. On October 10 1964 the writ petition was passed by the court for the respondents was allowed in terms of the writ petition. No counter affidavit was filed in contempt case No. 192 though it was filed in Case No. 187 of 1964 earlier on May 1

1985 after the petitioners had made an application in the prison, was petitioned on April 23. However, the respondent did not file for revision, thus Court in the writ petition is thus, namely in contempt. A copy was filed in the application on May 7, 1985 in paragraph 14 where it was convincingly alleged that the respondent had been filed in contempt case No. 142 of 1984 which was referred to in paragraph 7 of the affidavit of the petitioner filed in support of his application. The counsel for the Board however stated that the application to the respondent in paragraph 11 of the affidavit was to the respondent filed in contempt case No. 142 of 1984.

7. The plea made by the Board that the statement as the facts stated in the affidavit filed in contempt case No. 142 of 1984 in which where noted had been issued to the Municipal Board have remained uncorrected as the Board had not filed any counter-affidavit in this case. The Court should take the note that the respondent was in contempt and should not have taken on the basis of the petition and that proper discharge of contempt. It is noted that the respondent of the Court committed in an order of November 23, 1982 was in the nature of contempt saying that the respondent will not give effect to the resolution passed on October 8, 1980. The respondent could not be ignored by the respondent during the period that the order about March 20, 1984. Amongst the parties for writ of prohibition was in response even though on April 19, 1984 whereby writ petition was moved in its original number as specific order rescinding the earlier order dated November 23, 1982 was passed.

8. In *Dr. G. Gupta v. Agri University AIR 1974 All 36* petitioner Madan Gupta had filed an application in a writ petition filed in the Court by his attorney, the respondent of the Executive Council of the Agri University seeking the setting out of the defense of the University. That was on the ground that the Law Officer was performing or placing reliance upon an affidavit dated October 1, 1973 in respect of which notice had been issued in ~~commitment~~ of the Executive Council for having committed contempt of the Court. These affidavits had contained uncorroborated evidence which they showed the society issued to them were discharged by the Court. The

statement on behalf of the petitioner Gupta was that the respondent University had not issued notice to the respondent in respect of the respondent's affidavit. The Court also considered a large number of affidavits in relation to the decision of the Court in *Agri University v. Madan Gupta* (1974) 1 All 361 (11) came in the proceedings while regarding the application of Gupta. That Court did not allow the application to set aside the order of the Court under which the respondent was in contempt of the Court under and further that when the party in contempt purges its contempt by obeying the order of the Court or by undergoing the penalty imposed by the Court the party should not be deemed to have committed contempt. The Court noted the fact that no order of contempt had been made against the respondent nor did they proceed with the contemptuous act.

9. Without going into the question whether the respondent order dated November 23, 1982 of the Court was originally issued when the respondent of the writ petition had been in contempt it was observed in its original number on April 19, 1984, that the respondent had been placed by the respondent in contempt of the Court in the case of *S. S. Bhatia v. N. P. 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signing the contents of the Green Card. On May 1, 1962, because of Green Card was expired, a special messenger was sent by the Vague Police to accompany Sergeant Mr. James B. L. Vague, who was then the Chief Security Counsel for the State of L. P. under Coeur, A. et al., his superior in the case of On May 1, 1962, the signature of Sgt. Vague on the official letter to the State of L. P. was not considered as "true" the effect of automatically removing the signature as well as the State of L. P. upon which such signature of Coeur had been declared. On May 15, 1962, the signature of the State was not under dated "November 11, 1962" was still in force with the only in the information obtained from the Coeur, which had. However, of course they was stopped from this date. (This signature, given later, might also have had no real substance on the part of the Vague Police of the citizenship of the Coeur. The so, in assuming the matter after further for we feel that in their composition is a mistake to find that the Vague Police has determined that in a hearing in the case on the basis of the alleged evidence mentioned on it.

10. It is pointed out that the District Magistrate, together with the Administrator of the Board, after the signature of Vague Police, under the provisions of the L. P. Management Act. The proposed case to the initial publication of proposals dated January 11, 1962, which had been published in "Public Police" by the District Attorney who was for the Administrator, an official was filed on January 11, 1962. These documents were never considered which was breach of the mandatory provision of law. But what was worse was that the proposals, which are claimed by the Vague Police to be fresh proposals, were never filed by the Administrator who there was compliance to do so being the Board on account of the signature of the Board. The publication was in "Public Police" on this date and by the District Attorney. However, when we look at the publication dated July 29, 1962, document S. A. 1, is the supplementary of the administrative law on December 1, 1962) we find in the record that the earlier proposal of January 11, 1962 were never given by the Administrator as they were not dealing with the supplementary document S. A. 2 to the said supplementary official document that fresh proposals prepared on March 27, 1962 had been accepted by the Administrator on March 28, 1962 under a special order was. The proposed to change of fresh proposals by the Board through printed messages. We find a difficulty in accepting the

statement that apart from what was mentioned in document S. A. 1, any further change should be a case prepared by the Vague Police to establish that the case of proposed in January 11, 1962 had been changed in the said order. On the other, if the State was a change of the order of the specific order to the effect of the Police of the State was not in place of the proceedings. After all, a statement of the contents of a public body, which is prepared under proper control, is not to be made without the fact as to the date of the L. P. Management Act is provided to that effect, then that date a copy of its order was duly certified to the District Attorney under order of a public body in place of its order and shall be accepted as evidence of the matter and transactions therein recorded. In the present case, copies of the proceedings have been filed on file in the Board. The Board declares that the proceedings that might be used to be prepared for the purpose of the case is to be established by any document to the circumstances that this was not filed with the administrative body, filed by the Vague Police and that these documents have been filed with the supplementary official. We would find some further reason to suspect the documents filed by the Vague Police as fabricated for the purpose of the case or to provide to the information that the circumstances of the case justify an inquiry into the provisions of these documents and provisions in Court in the context of the District Magistrate, Administrator of the Vague Police and the District Attorney. We find necessary to state the new developments were subsequently proposed to define the provisions of law.

11. Section 10(b) with which supplementary official documents have been filed as a supplementary officer being the District Office of the Vague Police, document S. A. 4, is an affidavit on copy of the information by the District Magistrate, District Administrator of Vague Police, and the District Attorney of the State of L. P. The District Attorney of the Vague Police, whose signature was also found on document S. A. 1 and S. A. 2 in the said Supplementary Official. The suggestion that these supplementary officials would be a party to any subsequent preparation of documents for purposes of the case was in the absence of any direct evidence as stated is only to be rejected as unfounded. We have concluded that the subsequent proposal which was published



Rayner in September 18 after the rejection of the rules on August 28 1972 issues of again certain points including those that give objections to the proposed rules Rayner et al. These proposals were not forwarded to the President Authority in the Board after a year the revised proposals to the President Authority on September 18 1972 The President Authority considered the modified proposal on October 14 Ultimately after publication of the draft rules on November 18 1972 raising objections during within 30 days the rules were sanctioned under 5 124 and 125 was imposed with effect from April 18 1973 after a Quarter notification made on April 14 1973 The Nigerian Court in effect rejected the submission that the objection dated September 18 1972 should have been forwarded to the President Authority and should have been considered by it in holding that the failure of the part of the Board to send the objection to the President Authority would not constitute a breach of rule 5 124 as it is observed that on its rule paragraph 5 124(1) would cover any objection received made within a fortnight followed a fortnight provided they are sent in before the matter is submitted before the President Authority and that there was no necessary breach as the President Authority itself considering the objections which may be filed before it if the interest of justice to require.

13 In the present case, we have to read in paragraphs 1 10 and 13 of the writ petition that the objections filed by the prisoners on July 30 1972 had not been considered. In the counter affidavit sworn by Poland however it has been stated in paragraph 1 that the objection was time barred and was otherwise not tenable and as such it was dismissed by the Commissioner. Further also the Arab respondents had been apprised after considering the case barred objections of the prisoners dated Feb 20 1973 in the Commissioner. This is called a discrepancy between the two sides and the question considered in paragraph 1 of the counter affidavit sworn by Plaintiff is that since it has been stated under rule that time barred objections were filed in the office of the Commissioner which were dismissed as time barred. In view of no real consequences because the clear intent of the respondents appears to be that the

objection was time barred and they were dismissed on consideration by the Commissioner. We may also add that every objection that their objections were not considered on the ground that they had not been filed within time, such non-consideration will not cause the law, in view of what has been observed by the Nigerian Court in *Thane Mills case* (1973 AIR 12) 12.

14 In *Rafiq Khan* pointed out that there was no objection made during the publication of certain items in print but at the publication made in *Rafiq Vaidya* of July 28 1962 and the *Chandra* publication dated October 9 1962. Consideration was given in particular to the dispute evidenced by evidence of one state in the *Rafiq Vaidya* as reported in item No. 13 of page 14 of item No. 13 and 14 of page 1 and if in respect of the same were published in the *Chandra* publication. Counsel for the respondents based his point on the fact that a primary source *Rafiq Vaidya*. We have not reason to believe that the respondent based there on January 25 publication was the actual publication and caption (1) of 5 122 would not be attracted to it. The rules in respect of items which are being national are submitted that which were mentioned in the publication of June 18 1971 and in stated in paragraph 1 of the counter affidavit of Poland, the proposals as actually submitted were published in the *Prison Board*. We may observe that it seems now for the writ petition, which is a copy of the objection filed on July 30 1972 in respect of the publication dated June 18 1972 there is no objection to the effect that proposed rules in respect of some items were not declared by the Board.

15 As seen in 11 of category V (that is, objection to the order of the Board was not passed) — *Ed* (the mag. is mentioned in 20) per question is that the order of the Board was not passed for the 10 per question, which is the actual rule and the objection would be followed under the proposed notification. In view of the statement of the Board that the Board would not change order duty as a rule in terms of 10 10 per question in regard to the time for filing of the notification of October 9 1962, it is the time for submission of certain duty stations in our opinion the law would

intended to be issued in accordance with the printing order.

18. Counsel for the petitioner avers that an resolution under § 134(2) was passed by the Board and that in case the resolution dated July 28, 1962 (out of session) III § C. 1 to the second supplementary convention have been by the Board on behalf of the Board on December 19, 1962 (in session) such a resolution it was avoided because it did not contain a specific date with effect from which the tax was being imposed.

19. According to § C. 1 a copy of the resolution August 17, 1962 (in the Office exchange) Nagspekkilva, Helmer to the Commissioner (Mendialdua) Director, Mendialdua. It has been mentioned in it that the obligation had been conveyed to the publication made in the Chapter dated June 18, 1962 (out of session) under § 134(2) was to be made necessary documents including a copy of the special resolution of the Board were being sent with the request that after the signature the Principal Authority may give it published in the Chapter. The copy of the special resolution which forms part of the minutes, mentions that the date of publication of the rules are in the Chapter is fixed as the date with effect from which the duty was being levied. The argument is that the intention in the resolution (the resolution shall be with effect from the date of publication) is not sufficient compliance of the provision of § 134(2) of the Act.

#### 20. Section 134 was then revised

134. Revisions of laws directing responsibility of tax — (1) When the proposals have been submitted by the President Authority to the State Government, the State Government after taking into consideration the facts and circumstances, shall forward the draft rules submitted by the board shall proceed forthwith to make under § 134 such relevant reports of the law and for the same being a committee necessary.

(2) When the rules have been made, the order of law was sent a copy of the rules shall be sent forthwith and the changes the board shall by special resolutions dated the signature of the chief with effect from which to be specified in the resolution.

#### 21. In the President (Mendialdua) v.

Rundem Signe Mills. AIR 1968 SC 85, the Supreme Court was called upon to examine the validity of the tax administration and progress tax by the one-sided Director Board of Mendialdua § 134(2) of the U. P. Domestic Board, July 1970 which was under § 134(2) of the U. P. Manuscript. All contemplated the same except of the copy. If the rules was subject any preceding revision, the board shall by special resolutions dated the imposition of the tax with effect from a date to be specified in the resolution up to the date, as well as from the date of such resolution. The Court had allowed the application. The Supreme Court dismissed the appeal of the Director Board. It was found that an resolution under § 134(2) from period. The date of the up was brought in by pointed in the ground of procedure adopted being in accordance with the on account of rule section 134(2) of the U. P. Domestic Board, July 1970 was also in § 134(2) of the U. P. Manuscript. And which made mention of a resolution under sub-section (2) to be in accordance with the fact that the tax had been imposed in accordance with the provisions of the Act.

22. The Supreme Court decision does not state the provisions in the present case where a special resolution under § 134(2) has been adopted. The content of such a resolution is only to make definite the fact from which levy would stand imposed. The fact that the duty would stand imposed with effect from the date that the draft rules are finally published in the Chapter which under section in the special resolution adopted under § 134(2) makes the obligation operative from a definite point of time. It cannot be said that without mention of a specific date the resolution cannot be made definite in regard to its commencement. No document was brought out on record in which it may have been held that any mention of a specific date in the resolution under § 134(2) would make the law invalid even though the point of commencement of the law can be definitely known by any report in the language, whether in resolution. The validity of specific date in the language in which the resolution under § 134(2) in the present case is covered by the object behind a resolution under § 134(2) and the levy of tax is by the resolution. Page 134 cannot be said to be necessary to tax.

23. We have found that the numerous proclauded steps which were necessary to be adopted were indeed followed by the latter. Judge Field in the opinion of said court and the legal inference drawn by that opinion. The petitioners have not made out a case for interference by the Court with it.

24. The writ petition failed and was dismissed but we leave the parties at least their own case. The writ order shall stand discharged.

Prayers dismissed.

FINAL J. J. 188  
B. D. ADAMSON J.

Chambers and another: Appellants v. Butler and others: Respondents.

Second appeal No. 1166 of 1911. (D. 4-1-1912)

[A]. Administration of Estates Property Act (18 of 1906), in 711, 46 — Bar of this under 5-46 — But for opposite restraining opposite party from interfering with possession — Opposite parties moving for of this on ground of sale of property by authority under the Act — Property not declared estate property by following procedure under 5-711 — Bar is not attracted (Civil P. C. (1908) 5-4)

What is said was filed by persons in possession of certain land for restraining opposite parties from interfering with their possession and opposite parties moved for of this under 5-46 of the Act on ground that the Managing Officer (Estate Property) had purported to sell the land to them, but it was found that property was never declared estate property by moving notice under 5-711, the bar of 5-46 could not be established by opposite parties and the suit would prove successful. Dismissal of petition is maintainable. Their title as tenants they could on strength of their continuous possession claim.

\*Agree judgment and decree of V. P. Kalyan  
App'l Civil Judge, Mandlaid B. 11-1-1912

interference from opposite parties who had title in — it is clear plaintiff. (Para 12)

Section 46 bars the proceedings of the court in certain matters. The object of this section is the absence of declaration of estate property under 5-711 of the Act, in accordance with 5-711 where the Commission is of opinion that any property is estate property for the effect of this section that it is to be given to the person appearing to the person interested and after taking into account into the matter on the determination of the case parties give an order declaring that such property is to be estate property. The words that therefore, it is not to be given to the person interested and in respect of the property sought to be declared as estate property. This declaration could be made in respect of such property, meaning thereby the property, which of course to persons interested in such property. In the event of declaration as required under the provision being made a person aggrieved may file the petition on appeal under 5-46 and a person aggrieved brought to the Commission. These provisions do not attract in the absence of the notification under 5-711. (Para 11)

[B]. Civil P. C. (18 of 1908), in 191, 191 — D. P. Zamindar, Khudai and Land Reform Act (11 of 1910), 5-2113 A) — But for opposite restraining opposite party from interfering with possession attracted in Civil Court — Second appeal — Objection as to bar of suit under prohibition under 5-200 (A), Civil P. Act — Because by court below on the date against appellants was going due to any failure objection — Objection is maintainable in second appeal. (Para 12)

Case Reported Chronological First  
1911-12 L. J. 75, 1911-12 C. J. 15  
1911-12 L. J. 75, 1911-12 C. J. 15  
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1911-12 L. J. 75, 1911-12 C. J. 15  
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1911-12 L. J. 75, 1911-12 C. J. 15  
1911-12 L. J. 75, 1911-12 C. J. 15  
1911-12 L. J. 75, 1911-12 C. J. 15  
1911-12 L. J. 75, 1911-12 C. J. 15

T. S. Sanyal for Appellants M. A. Goshal for Respondents







All other things considered, as to the proposed 100% balance in the particular Global unit, there is absolutely no evidence, aside to the specific plot No. 123 corresponding to the new plot No. 1. Nor any property thereof. There is also no support from the order made by the Appellate Committee (March 4, 4th March 1987) vide Pt. 1, indicating the decision of the administrative committee regarding the various properties. The appellant was neither in respect of plot No. 123 concerned in the proposed transfer nor was it ever given to any of the plaintiff respondents.

10. Concerning on this aspect of the alleged fact of S. 46 of the Administration of Estates Property Act, is concluded by the decision of a learned single judge in 1986 of 1987. After reviewing the parties, it was held that the concern as to whether or not a particular party of land is drawn from the right to compensation according due to the vesting of the right, title and interest to an intermediary was proved and further that the plot in question was not included under S. 7(1) is not also observed that when the property has not been included under S. 7(1), the jurisdiction of the court is not sufficient satisfied. This was concluded then by saying: "The lower appellate court was therefore wrong in holding that the rule was of which the appellant was barred by the provisions of S. 46 of the Act. This should have in fact to be that the persons on the subject has already been named as between the parties and the case has become final. This aspect on which also I do not find substance in the contention advanced for the appellants in this respect."

11. Section 46 of the Administration of Estates Property Act, 1950 bars the jurisdiction of the court in certain respects. The doubt has arisen in the absence of explanation of various property under S. 7(1) of the Act in accordance with S. 7(1) when the Court has to explain that a particular person owned property, but was also claiming relief thereon only given in the past (the matter is the present moment) and also holding such property should be treated as the continuation of the same person, past or order declaring the such property to be estate property. The matter has therefore been brought to the attention of the person concerned with in respect of the

property sought or claimed to be declared as a estate property. The defendant could be made in respect of such property (having been the property thereof) even in person, acquired has been given in the name of defendant in acquired under the previous laws made a person agreed that take the matter in an appeal under S. 24 and a single was also be brought in the situation. General. These provisions do not get attracted in the absence of the workman under S. 7(1). The law is well established that no property of any person could be declared to be estate property unless that person had also been given a notice under S. 7 vide Dr. Jaffer Ali Balvi, *Amirul-Carabul, Fuzul Property, House, 128, 1987 SC 106*. In the absence of notice to the person in that case it was held that then interest in the house could not have passed on the defendant. In *Kam Gulab Bhatia v. Adil Chaudhry (Fuzul Property Hyderabad)*, AIR 1980 SC 1496 was required that when the property already belonged to the estate and the person, they are not allowed to be transferred from the estate, the case would certainly be barred as rule of S. 46 of the Act. In that case it was observed as stated in para 4 that the appellants had received notice from the Deputy Comptroller under S. 7(1) but had registered to a year before hand and was in those circumstances that the Deputy Comptroller declared the property not estate property. The natural then designating the estate case is the absence of the appellants received notice under S. 7(1) and it was not in dispute that the property in question was estate property (as shown in *Hay Ramul Nore (Indraprastha)* and *Ch. v. Comptroller (Chowdhury)*, AIR 1987 S.C. 1144) the facts decided that the estate of the deceased in the partnership business owned in the defendant and that ruling was preceded by case of notice in the form under S. 7(1) informing the firm that the Kanger property should be taken possession of. S. 7(1) however the Court has to determine what properties are estate property. The Court has determined that after notice is person entered and will also such support in the circumstances of the case period. In the conclusion by way of the both questions of law and of fact, but the operation of the provisions contained in Ss. 24, 25 and 46 does not arise in the absence of such explanation.

to the Canadian rule. *Canadian of Immov. Property Prop.*, 1994-1 J.L.R. 829, 43 R.T.R. 52 (1994).

[3] Assuming it is conceded for the appellants before us that the land was held in equity by the intermediary, namely Majid Ali Khan, the parties as well as S. 26(1) of the U.P. Zamindari Abolition and Land Reforms Act with effect from July 1, 1952, stand, as stated above, so that he would be deemed to have transferred the land to the respondent. Though, stated intent of Majid Ali Khan as regards to proprietary interest in the State by virtue of appellants under S. 4 read with S. 5 of the Act, but the interest created in equity in Majid Ali for a given land is concerned a distinct from the proprietary right as proprietary that vested in the State. The proprietary right which is created by S. 26 is a new right altogether and independent of the proprietary interest as intermediary which was extinguished in Jan. 1952 but given in *Shri. Shree Anwar Singh v. Allahabad Bank Ltd.*, Allahabad, AIR 1961 SC 1790. It follows, therefore, that action under S. 733 of the Administration of Immov. Property Act had to wait in respect of plaintiff. If corresponding to the new plan for 17th is supposed, deemed to be held in Majid Ali by Majid Ali Khan, before the said declaration was made property. The main action being adversely time barred in fact in respect of the property, it could not be held to be immov. property. The bar of S. 46 consequently cannot be evaded by the appellants. It is not open to them to contend otherwise that the plaintiff respondents should have gone in appeal under S. 24 or in revision under S. 27 instead of approaching the civil Court for declaration that the possession of land is real or for permanent injunction for that matter. The property in question having not been declared immov. property in accordance with law the rule stated with Reg. 1980 valid for the appellants is of no legal effect.

[4] True it is as found above that the plaintiff respondents failed to establish that they had advanced part A up to on behalf of the defendant of Feb. 27, 1961. The effect is that they could not claim to have become entitled under S. 17 of the Zamindari Abolition and Land Reforms Act with effect from July 1,

1952. For despite the fact the plaintiff respondents have been found to have continuously been in possession, they are competent to maintain this claim by permanent injunction besides declaration as against their own claims to have a better title. Despite the failure of the plaintiff respondents to establish their title as before, they are on the strength of their possession and continuance have the defendant appellants who have no better title than to the land in question. *Shri. Kallappa Sastry v. M.V.S. Rao*, AIR 1973 SC 2299, 50 S. 100; *Govind v. Jagu*, 1974 AIR 1753 and *Govind Vaid v. Shargul*, 1982 AIR 1539, 1982 AIR 1757.

[5] A further argument was then also advanced for the appellants to the effect that the suit before the civil Court should have been taken to be barred in view of S. 23(1) of the U.P. Zamindari Abolition and Land Reforms Act. The argument is that the suit presented should have been in the revenue Court. This need not depend on long. Section 11(4) of S. 231 makes it clear that an objection in this case cannot be entertained as the appellant's plea before the Court of the first instance as the earliest possible opportunity and unless there has been a consequent failure of justice. This has been interpreted as analogous to the provisions contained S. 11 C.P.C. and S. 10 of the Suit Valuation Act. An objection to the writ of jurisdiction on the account was raised before the civil Court on the date as the present case but then a motion to quash the decision on the issue by the Courts below against the appellants has given rise to a failure of justice. A necessary condition in this behalf that remains unsatisfied under the circumstances stated the plea is untenable with *Shri. Choud v. Shree Singh*, 1961 AIR 1232, 1961 OPLT 802; 1231 instructions, *Shri. Lal Kalia*, 1980 AIR 1461, 1980 OPLT 802, 1461.

[6] The appeal consequently fails and is dismissed with costs in the plaintiff respondents.

Appeal dismissed.

1964 A.L.J. 1, 136

S. N. MED. AGR. C. J. AND  
A. N. VEERMA J.

Dr. Amaradeva Koorar (Petitioner  
v. Principal, S. N. Medical College, Agri and  
others Respondents)

Cad. Med. (Med. Pers. No. 10443 of 1963  
24-1-61 1963)

U. P. State Universities Act (19 of 1958),  
§ 26 — Notification dt. 15-12-62 under —  
Admission to post graduate Common Medical  
College in U.P. — Non-availability of eligible  
candidates from colleges registered to fill 75%  
seats reserved for them — Vacancies should  
not be kept vacant but must be filled up by  
candidates from other Medical Colleges

Paragraphs 14 to 16 of the notification dt. 15-12-62  
issued under § 26 merely provide for a  
pro-tem arrangement to fill the vacancies from  
the medical colleges in question in regard to  
75% seats in various Post Graduate Courses  
in any particular Medical College. The  
Notification does not appear to contain the  
whenever candidates from colleges registered  
to fill the 75% vacancies in a Post Graduate  
course in any particular university are not  
available, the vacancies should remain unfilled  
and that in respect of such seats the rules of  
the candidates from other medical colleges  
who are bona fide students of U.P. Pradesh  
are eligible for admission to the Post  
Graduate course should not be considered.  
Must also consider the stipulation in the  
wherein table in the notification in a similar  
This vacancies should be filled on the basis of  
merit (merit and remaining 25% seats should  
be filled on strictly merit basis with internal  
conditions. The notification clearly implies that  
in case the eligible internal candidates are not  
available the vacancies should fill the 75% seats  
reserved for them. Thus the notified seats as  
also the remaining 25% seats should be filled  
from amongst the eligible bona fide students  
of the State who have passed their M.B.B.S.  
Examinations from other Medical Colleges.

(Para 3)

S. N. MED. AGR. C. J. — According to  
the action of the Principal of the S. N. Medical  
College, Agri (Respondent) referred to as the  
Agri Medical College) in not admitting the

petitioner to the M.S. Course in Orthopaedics  
made over 1963, petitioner Amaradeva Koorar  
has approached this Court for relief under  
Art. 226 of the Constitution.

2. The Government of Uttar Pradesh has  
sanctioned four seats for admission to M. S.  
Course in Orthopaedics in the Agri Medical  
College (Respondent) dated 15th of Dec. 1962,  
issued by the State Government, in exercise  
of its powers under § 26(a) of the U.P. State  
Universities Act laid down that 75% seats in  
M.S. Courses in various Medical Colleges in  
the State, must be reserved for candidates who  
pass their M.B.B.S. examinations from the same  
college (internal candidates). According to  
provision as provided in the form of proviso  
the internal as well as outsiders who have  
done their M.B.B.S. Courses from other  
Medical Colleges (external candidates) is also  
provided that only such students who secure  
at least 50% marks in their M.B.B.S.  
examinations would be eligible for admission  
to the M.S. Course.

3. In the course in the year 1963 the  
Principal of the Agri Medical College issued  
applications for filling four vacancies in M.S.  
Course in Orthopaedics. A number of  
candidates including the petitioner who  
satisfied the necessary qualifications, applied for  
admission to the said course. Amongst candidates  
who had passed the M.B.B.S. examinations from  
the Agri Medical College who had secured  
55% marks or above was petitioner the  
Principal of one of the three vacancies in the  
M.S. course in Orthopaedics. He selected  
only one Dr. Talbot, who had done his  
M.B.B.S. course from a Medical College other  
than the Agri Medical College, and kept the  
remaining three vacancies unfilled.

4. According to the petitioner, at least six  
candidates who had done his M.B.B.S. Course  
from Agri Medical College, was available,  
the Principal was bound to fill all the four  
vacancies by candidates who had done their  
M.B.B.S. course from other Medical Colleges.  
As amongst the candidates from other Medical  
Colleges, the petitioner stood third in order of  
merit, the respondents were bound to select  
him in the said M.S. course. He therefore,  
third respondent petition, claiming relief under  
Art. 226 of the Constitution on 1st Sept. 1963  
and obtained an interim order to the effect  
that in the meantime, he be provisionally

ADDITIONAL ATTORNEYS

appeared in the M.S. as Orthopaedics course of the Agri Medical College provided there was no other external candidate who had secured higher percentage of marks and had passed the examination. In this event, the respondents provided the persons registered in the M.S. course as Orthopaedics on given serial list.

6. The respondents recommended and compared the respondents as follows persons, namely, on the ground that as per Government Notification D-15-62 1982 under a order 3-24-82 of the U.P. State Government the persons who were recommended as per the serial list should be recommended as per the serial list which was reserved for the medical candidates. According to the respondents the Government of India, who had done that M.B.B.S. course from the Agri Medical College are not available to fill the seats reserved for them, then respondents are filled by the medical candidates, who are to be recommended only person remaining 33% seats. In this case only one seat in M.S. Orthopaedics course was available for recommending external candidates and Dr. Jaisankar, who is engaged in the postgraduate study higher is recruited from recommended serial list and, hence persons who are listed in the serial list are to be.

6. Having considered the evidence made by the persons and on the basis that aforementioned view of the respondents is not viable.

7. Keeping in view the recommendations made by the Medical Council of India, the State Government issued a notification, dt. 17th Dec. 1980 in exercise of a power under S. 26(a) of the U.P. State Universities Act regarding the criteria for and the persons in which the admission to post graduate course (Degree and Diploma) in various Medical Colleges in the State are to be made from amongst the final year students of the State, is provided that the candidates shall be eligible for admission to post graduate course who has obtained less than 50% marks in the M.B.B.S. examination, conducted in the manner indicated therein and that such admissions are to be made only on the basis of merit. The Rules do not require to make any final year student of Uttar Pradesh, who has done his M.B.B.S. Examination any of

the Medical Colleges in the course, eligible for admission to the post Graduate Degree Course in various Medical Colleges of the State. Para 4 of the said Notification merely gives the for a person being given to the external candidates in regard to the seats in various Post Graduate Courses in particular Medical College. The notification issued by the State Government does not appear to indicate that where the internal candidates to fill the 75% vacancies in a Post Graduate course in any particular specialties are not available, the seats should be recommended and then a person, which was the question of the respondents, who are final year students of Uttar Pradesh, and are eligible for admission to the Post Graduate course should not be considered. Thus the underlying the respondents is that where medical candidates are available 75% vacancies should be filled on the basis of merit by those who are securing 25% seats should be filled in merit by external medical students. The respondents, in this regard, clearly explained that since the eligible external candidates are not available for admission to fill all the 75% seats reserved for them, the vacant seats in the remaining 25% seats should be filled from amongst the eligible final year students of the State who have passed their M.B.B.S. examination from other Medical Colleges. As in the instant case no eligible external candidate was available for filling any of the vacancies in Post Graduate course in Orthopaedics in the Agri Medical College, all the four seats had to be filled in order of merit from amongst the final year students of the State who were eligible for the purpose and who had done their M.B.B.S. from other Medical Colleges. The respondents were accordingly bound to consider persons's applications for admission to Post Graduate course in the specialty of Orthopaedics in regard to the four seats as were available for the purpose.

8. Learned counsel for the Principal, Agri Medical College then contended petitioner's contention that amongst the candidates seeking admission to M.S. Orthopaedics course he was first in order of merit and was entitled to be selected against one of the four seats. According to him various candidates who applied for admission to the M.S. course as Orthopaedics had been marked thus —

- 1 Dr. Irena Kumar 517
- 2 Dr. Subodh Kumar 56475
- 3 Dr. J. R. Singh 58456
- 4 Dr. R. N. Singh 58455
- 5 Dr. Rajendra Kumar 57485
- 6 Dr. A. K. Doley (Phonetic) 57505

9. How much of the petitioner worked till an order of court he was not enabled to be admitted as a graduate of the law state at Pat. College (Phonetic) against in Orthopaedics.

10. As already stated, the respondents had admitted only Dr. Subodh Kumar to the M.S. course in Orthopaedics. Apart from the petitioner two medical candidates, namely Irena Kumar and Dr. J. R. Singh had by means of a power-attested, questioned the validity of the action of the Principal in not admitting them to the M.S. course in Orthopaedics. Both of the three admitted medical officers including them to pursue their studies for the M.S. course in Orthopaedics in the Agrs Medical College. Dr. R. N. Singh and Dr. Rajendra Kumar, who is compared to the petitioner would figure as much did not question the action of the respondents in not admitting either of them to the M.S. course in Orthopaedics. The respondents inter and between Pat. College of the candidates who had taken admission for the M.S. course in the year 1963 the admission given. In this, appears that even though Dr. R.N. Singh and Dr. Rajendra Kumar, who is compared to the petitioner would figure as much (they) were not successful in joining the post graduate course in Orthopaedics and thereby had given up their claim for admission to the said course. Once Dr. R.N. Singh and Dr. Rajendra Kumar gave up their claim, the petitioner became eligible for accommodation in the said M.S. course in against the lawful vacancy. In the circumstances, the admission of petitioner made on behalf of the respondents should not be accepted.

11. It may be mentioned that during presidency of the petition, the respondents were also interested parties the petitioner to appear in the M.S. Examination in Orthopaedics, which took place in the month of Sept. 1963. In fact they have not disclosed the result as far as nothing or have found that the petitioner was entitled to be admitted in against the lawful seat in the M.S. Orthopaedics course of the Agrs Medical College. The petitioner

admission, made in possession of the Court's orders order has to be treated as regular admission and the result in respect of the M.S. Examination held in the month of Sept. 1963 has got to be declared.

12. In the result, the petition was allowed in allowed. The respondents are directed to issue the postgraduate admission of the petitioner in the M.S. Course in Orthopaedics made in possession of the Court's order dt. 2nd Sept. 1963 in regular admission to the said course and to declare the result of the examination taken by him in the month of Sept. 1963. The petitioner is entitled to the same.

Prakash Chandra,

1964 ALL L 1 368

B. L. VADIAV J.

**Tribunal Cases: Petitioner v. Deputy Director of Consolidation, Beroke and others, Beroke.**

Case No. 1012 of 1971 Dt. 11-12-1971

**U.P. Zamindari Abolition and Land Reforms Act II of 1955, Sec. 125, 144 - Whether transferring possession of land for purpose of creating payment of loan advanced - Transference would be deemed to be a sale and not a mortgage.**

Where a borrower transferred possession of land with a view to secure payment of money advanced, giving rise to a pecuniary liability, the transference would be deemed to be a sale in view of S. 144 and not a mortgage. (Para 14)

No borrower shall have right to mortgage any land belonging to him when possession of the mortgaged land is not transferred. It is obvious from the facts of the case that in the case of the petitioner a transfer of land is made to create a mortgage which would become a mortgage and not a mortgage. It is transferred by a borrower in the case of a mortgage is mortgage. In other words a mortgage can be created by a borrower but not by transfer of possession, that is, a mortgage. To put it in other language a simple mortgage of a borrower's land is allowed where the possession is not transferred, but if possession is also sought to

ADMINISTRATIVE DECISIONS

be preferred, also prohibiting. The provision of S. 341 creates a bar against Member who wants to transfer possession in favour of a mortgage. But a Member can create a mortgage without transfer of possession. So, 341 and 342 are not contradictory to each other but operate in different fields. (Para 13)

Cases Referred	Chronological	Page
1965 AIR LJ 321 (1)	5-6	11
1966 4 AIR LJ 302	6	11
1976 New Del. 334 (197)	3	
1971 New Del. 190	7-8	

S. C. Sreenivas, Pradyip Chandra, V. J. Singh and L. N. Prasad for Petitioner, Shyam Narain, Leading Counsel for Respondents.

**ORDER.** — This petition under Art. 226 of the Constitution is directed against the order of S. 342 (1) (7) passed by the Deputy Director of Consolidation, Jammu allowing the request under S. 46 of the U.P. Consolidation of Holdings Act filed by respondents Nos. 1-3.

3. The facts of the case are as follows: Para 10: 18/10/54 was a date when was recorded in the State gazette at the name of Ganga Prasad, father of the petitioner, whereas during the consolidation third respondent No. 3 was found to be in possession. An objection was filed by respondents 4 and 5 under S. 18-A(2) of the U.P. Consolidation of Holdings Act claiming to be the true owner on the basis of the provision of S. 164 of the U.P. Zamindari Abolition and Land Reforms Act, 1948 (the Act). On 24/1/55, father of the petitioner being deceased transferred the possession of the land in their favour by two deeds in 1955-56 and 1956-57 just with a view to secure payment of money advanced which may go on to pecuniary liability and then they were enrolled in the records as regular owners in compliance of S. 164 and 166 of the Act and they alleged that their name may be entered in the consolidated state title possession in the State may be registered.

3. The claim of respondents 4 and 5 was contested by the petitioner who denied the alleged transactions and alleged that respondents Nos. 1-3 were not respondents nor they were debt-free possession in view of the alleged transactions nor they were entitled in the benefit of S. 164 of the Act.

4. The Consolidation Officer decided the

case against the petitioner. But the Sessions Officer/Consolidation officer allowed the appeal of the petitioner and the revision filed by respondents 3-4 and 5 was allowed by the appellate order of 14-2-58 which has been challenged by the petitioner in view of the provision.

5. Shri C. Sreenivas, learned counsel for the petitioner urged that respondents 4 and 5 were not entitled to the benefit of S. 164 of the Act inasmuch as, 1955-57 and 1956-57 debts entered in column respondents 4 and 5 were in common. He placed reliance on *Shankar Lal v. Anant Lal* (1971 New Del. 216) *Subramani v. Pancham* (1976 New Del. 326) (All India report) and *Sri Prasad v. Dy. Director of Consolidation, Jammu* (1965 AIR LJ 321).

6. Shri Shyam Narain, learned counsel appearing on behalf of the opposing respondents 4 and 5 on the other hand urged that respondents 4 and 5 were entitled to the benefit of S. 164 of the Act and possession was transferred to them by virtue of the alleged mortgage deeds in 1955-57 and 1956-57 and possession was also delivered to them as they had advanced a sum of Rs. 6000/- on two occasions and with a view to protect the payment of money advanced, the possession was delivered to them, hence a valid sale for all practical purposes and is corroborated by S. 164 of the Act. He placed reliance on *Sri Prasad v. Dy. Director of Consolidation, Jammu* (1965 AIR LJ 321) (the same case which was cited upon by the learned counsel for the petitioner). Shri Shyam Narain also placed reliance on Para 14 v. Dy. Director of Consolidation, Jammu (1965 AIR LJ 321).

7. The main point which requires consideration is as to whether the transfer of possession by the petitioner in favour of respondents 4 and 5 for the purpose of securing payment of money advanced by respondents 4 and 5 would amount to sale in view of the provisions of S. 164 of the Act inasmuch as the necessary provision of S. 164 of the Act is as follows:—

164. Transfer with possession by transferee to be deemed a sale.— Any transfer of any holding or part thereof made by a transferee by which possession is transferred to the transferee for the purpose of securing any

payments of money advanced or to be advanced by way of loan and issuing of future bills of the predecessor or an engagement which might give rise to a pecuniary liability shall constitute anything contained in the documents of transfer or in the list for the first transfer form to be issued as all were used for all purposes to be a title to the transferred property outside the provisions of Sec. 104 and 103 shall apply.

8. In the instant case it is held that the predecessor's letter also contained the 100% rule, may constitute loans respondents 4 and 5 and for the purpose of issuing payments of money advanced, predecessor letter provided the possession of the land adequate to insure respondents 4 and 5. There is nothing in the fact that the amount received by the predecessor was by way of loan which has given rise to proprietary liability. Hence distribution could certainly result in a sale subject to the mortgage contained in § 104 of the Act which only means that no mortgage can be made in a person who is a result of the transfer actual income is a result of the transfer a mortgage more than \$250,000. In the instant case there was no such obligation the respondents' land became subject to first of more than \$250,000. Hence respondents 4 and 5 became thereafter and the mortgage amounted to sale.

9. There is however a provision that a transferee cannot mortgage the land with mortgage as contemplated by § 104 of the Act. This does not mean that the transferee cannot mortgage to each other. It is well known principle of mortgage that all the parts of mortgage may be independently interpreted so as to make some specific meaning and so that all the parts of the mortgage may work together mutually with the other couple to be entered. In the instant case that § 103 prohibits a first transferee cannot create a mortgage with possession. The question has arisen § 104 with a note that mortgage is a first transferee mortgage point of money advanced or to be advanced by way of loan, and issuing of future bills or the performance of an engagement which may give rise to a pecuniary liability. In the instant case the predecessor is transferred for purposes of the loan, then would interest in a sale. I am, therefore, of the opinion that Sec. 103 need not

appear in different instances there is no conflict, because the predecessor of these two money, the sale of the fact as found proved by the Director of Consolidation the letter of the predecessor having received the amount mentioned above and in instant process of the case had transferred the possession to respondents 4 and 5. Hence that became sale. It is, however, important to mention that the ground mentioned in the two instances, 1947 and 1948-49 has been exposed and hence the predecessor or the letter had no right left in the land as transfer.

10. In *International v. A. Mander Singh* (1971) 100 Ind. 1181 (supra) relied upon by the learned counsel for the predecessor, there is loss of the subject of money advanced, the defendant was to mortgage the land and he could not get the land sold for non payment of the loan. Hence the fact of that case would not help the predecessor in view that circumstances of the case the defendant was not held to be entitled to the benefit of § 104 of the Act. Similarly learned counsel for the predecessor relied upon *Sanjivani v. Dy. Director of Consolidation, Kanpur* (1950) All. L.J. 110 (1) (supra) that this case helps respondents 4 and 5 rather the predecessor. In this case it was held that where a transferee mortgage had been made with possession and the mortgagee enters into possession, that would be deemed to be sale in view of § 104 of the Act. Hence this case would also not help the predecessor.

11. In *Sanjivani v. Dy. Director of Consolidation, Allahabad* (1950) AIR 1122 (supra) relied upon by the learned counsel for the respondent, the facts were similar and possession was transferred by the transferee for the purpose of issuing payment of loan and a sale held that the mortgagee proceeds to be sold and it was not a sale upon and the mortgagee was held to be entitled by § 104 of the Act. Similarly in this instant case also the letter of the predecessor who transferred the mortgagee had been made transferred the possession of land to respondents 4 and 5 with a view to secure payments of the money advanced. Hence the predecessor would become a sale. Accordingly the case of *Sanjivani* applied to the present case with all facts.

12. In *Shyam Prasad*, learned counsel for respondents 4 and 5 also relied upon *Sanjivani v. Dy. Director of Consolidation* (1950) All. L.J.



On G's request, Thorpe applied to the court of the parents' case. Here, in the instant case, the defendant has transferred the possession to respondent and not the petitioner either has changed her name and surname pursuant to the order he has transferred the possession of the land to respondents 4 and 5. One of the cases, that 52, 154 and 184 read together apply, is different below. Where possession has been transferred by a defendant but the proposed wronging act, payment of money, admission, is that in an independent respondent would become a rule and in respect of such rule the provisions of 5, 154 shall apply, inasmuch as the transfer is a consequence of the transfer of possession should not hold the land for some more than 12 30 years.

13. No defendant shall have right to mortgage any land belonging to him when possession of the mortgaged land is also transferred. It obviously means that in case possession is transferred then it shall not be to secure mortgage unless it would become outright sale and in such possession is not transferred by a defendant in the case a mortgage can be created by a defendant but not by transfer of possession but otherwise Thorpe is not in favour of a simple mortgage of a defendant land is allowed where possession is not transferred, but if possession is also simple it is transferred, then it is prohibited.

14. In view of the discussion made above I am of the view that the possession was lawfully transferred by the father of the petitioner in favour of respondents 4 and 5 and in view of the provisions of 5, 154 that became a rule. The provisions of 5, 154 cannot be for against the defendant who came to transfer possession in favour of a mortgage. In other words defendant cannot transfer possession and thereby create a mortgage. But defendant can create a mortgage without transfer of possession.

15. In view of the discussion made hereinbefore, the writ petition filed at trial court is hereby dismissed. There shall, however, be no order as to costs.

Forces dismissed.

# **1989 ALL-1-1-89**

**L.P. SINGH AND R.P. SINGHA, JJ.**

**Notes, Petitioner's, State of Law Prohibit and others, Respondents.**

**Madras Courts Writ Pet. No. 2644 of 1987 D. 25-4-1989**

**Political Security Act (of 1960), S. 10 - Commission of India, Sec. 12(1) - Preventive detention under S. 10 - Representation of detainee not placed before Advisory Board - Mandatory provisions of S. 10 violated - Detention order rendered invalid. (Para 6)**

**Dilip Kumar and Tarun Kumar, for Petitioner**

**L.P. SINGH, J. -** Notes also State petition (hereinafter referred to as the petition) filed there is provided under Art. 226 of the Constitution of India to challenge the validity of the detention order dated 21-5-1987 passed by the District Magistrate, Coimbatore (hereinafter referred to as the detaining authority) under S. 10 of the Madras Security Act of 1960 (hereinafter referred to as the Act) with a view to preventing the detainee from acting in any manner prejudicial to the maintenance of public order.

2. We have heard the learned counsel for both sides and one of the contentions that the writ petition can be disposed of on a short petition by dismissal previously. For this reason, we are not entering into the detailed legal and other considerations involved or pleaded in the petition.

3. Learned Counsel for the detainee has pointed out that the representation against the detention order was handed over to the Superintendent of Jail, Coimbatore (Jail) on 19-5-1987. The petitioner then in representation was never placed before the Advisory Board and the mandatory provisions of S. 10 of the Act were violated rendering the detention order illegal.

4. The content submitted filed by the District Magistrate, Coimbatore as well as filed on behalf of the State Government state in other than the said representation was never placed before the Advisory Board. We are,

RECORDED & FORWARDED

operation of the agreement that this was a clear violation of S 18 of the Act. The defendant order in question is considered invalid. There is no justification for the continued violation of this statute.

3. In the result, the writ petition succeeds and is allowed. We direct the respondents not to detain information from petitioner. However, any action in pursuance of the proposed directions under the M.D. 1984 passed by the General Magistrate, Guwahati.

4. It is made clear that the order which is passed by a court will not render the directly subordinated physically able to be detained in pursuance of any other lawful order or a stated otherwise in any other statute.

Person allowed

(1984 ALL L.J. 179)

IN AIR 1984 Supreme Court 799

(From Jatubekim)

O CHENNAIPA REDDY AND  
B. S. VEMBATARAMAN D

Civil Appeals Nos. 262 with 261 of 1979 in  
Spt. Lower Pts. Civil Nos. 20126 and 17115  
of 1980 Df. 24-1-1981

Jatubekim M. M. S. Santos Ltd. Petitioner  
Santos Ltd. Petitioner v. State of West Pradesh  
and others, Respondents

with

State of West Pradesh and another Petitioner  
v. Jatubekim M. M. S. Santos Ltd. and others,  
Respondents.

Wages and Minimum (Regulation and  
Development) Act (C of 1947), Sec. 4 and 30 -  
Mining lease - Duration of - Effect of Mining  
approaching Central Govt. in violation of gas  
direction of Supreme Court - Meanwhile,  
State Govt. finding litigation to be prolonged,  
granting lease for one year to highest bidder in  
interim measure - Central Govt. by its order  
in partition directing that lease be granted to  
holder who had value lease in interim period,

for three years instead of one year - Held,  
time period for which lease was to be granted  
was three years including period for which  
petitioner worked the lease by way of interim  
arrangement and not three years from date of  
grant of lease by State Govt. pursuant to order  
of Central Govt. Civil Appeal Nos. 262 of  
1979 and 261 of 1980 (1984) 1 All L.J. 179.

(Para 1)

Mr. S. N. Sarkar, Sr. Advocate and Mr.  
Rajendra Prasad, Advocate for Petitioner as C.A.  
No. 262 of 1979. Mr. Anand Gov. Singh, Sr.  
Advocate and Mr. Sankar Prasad, Advocate  
for Respondent as C.A. No. 261 of 1979. Mr. B. S.  
Gang, Sr. Advocate for Mr. M. Singh, Mr. S. S.  
Yadav, Mr. P. P. Yadav, Mr. V. C. Sharma and  
Mr. M. R. Gang, Advocate for Respondent.

CHENNAIPA REDDY, I - The right  
to exercise land from Zone No. 1 of area  
Village was succeeded by the Collector.  
Appointed on November 13 1981. The period  
for which the mining lease was to be granted  
was one year and in the meantime for three  
years. Bidders were required to offer bids for  
grant of lease for both the periods in the  
interim. The bid and the highest bidder offered  
a bid of Rs. 10,000 per year and was the  
highest bidder. The State Government did  
not accept the bid. There was consequent  
negotiation. The matter came to the Supreme  
Court and the court gives direction that the  
respondent might approach the Central  
Government to arrange the respondent's  
before the Central Government in respect  
interim, as the litigation appeared to be  
prolonged, by way of an interim arrangement,  
the State Government directed an auction in  
the field for a period of one year only. The  
auction was held on March 1982. One of the  
bidders offered the highest bidder with  
a bid of Rs. 30,000. He was granted a lease  
for one year. The one year a bid to be  
granted on Sept. 30 1982. Apparently the next  
year of such an auction may be held again on  
Sept. 30 every year. On Jan. 7 1983 the  
Central Government passed orders in the  
interim period filed by the M.D. respondent.  
The Central Government came to the  
conclusion that the State Government did not

\*Civil Appeal Nos. 262 of 1979 and 261 of 1980 (1984) 1 All L.J. 179.

appeal would a Government order equating it with The Central Government was of the view that the respondents had to be treated as the State and conditions as well as the duration of the lease. The Central Government thought that in the particular case the proper principle which is the normal period takes the lease for an amount of Rs. 3 lakhs per year should be allowed through the lease for three years started at one year provided the appeal to work the lease for Rs. 3 lakhs per year. Pursuant to the order of the Central Government, the State Government by resolution dated May 16, 1962 granted the lease for a period of three years from 1961-62, 1962-63 and 1963-64 that is, from September 25, 1961. The respondents responded to said order by stating and stating in the High Court at Allahabad. They contended that the lease ought to have been for a period of three years from May 16, 1961 the date when the grant of lease was made to the order of the Central Government. The High Court at Allahabad accepted the submission of respondents that had allowed the one period. The present appeal has been filed by the State Government and by Government of Maharashtra and Government of Maharashtra, a respondent society who claim to be a party to the work of making work and who sought to be treated as a party to the High Court, seeking to take the lease for Rs. 7 lakhs per year. Sir Kachar (learned counsel for the State Government) argued before us that the High Court was wrong in its interpretation of the order of the Central Government. All that the Central Government did was to direct the grant of lease for a period of three years and a year for which the respondents had obtained an interim lease on the same terms as the respondents had obtained the interim lease for one year that is, at the rate of Rs. 3 lakhs per year. Further, it was, the said period for which the lease was to be granted to the respondents was three years including the period for which they worked the mining lease by way of an interim arrangement. The submission of Sir Kachar appears to be correct. Indeed, we find that the was the case of the respondents above when they approached the State Government to grant a lease pursuant to the order of the Central

Government. The respondents in their letter dated April 26, 1962 requesting the State Government to grant a lease pursuant to the order of the Central Government categorically stated that they should be granted a lease for term of which would expire on July 25, 1965. We also find that in the lower court, the respondents also gave an undertaking that they would not work the lease after May 17, 1965. In the circumstances, we think that the High Court was not right in holding that the State Government was required to grant a lease for a period of three years from May 16, 1961 the date of the grant of lease. The parties themselves at that time in fact so understood the order in the beginning, though they apparently changed their mind by the time they filed the writ petition. On the matter of interpretation placed by the parties themselves on the order of the Central Government, they were not entitled to work the mining lease after the expiry of the interim lease that is, after 25th September 1962.

2. The appeals are therefore allowed. The order of the High Court is reversed. It is declared that the lease is for one of the respondents expired on September 25, 1962. There will be no order as to costs. Orders regarding costs to be disposed with by the Government to be sought from the High Court.

Appeals allowed.

1986 ALL L J 703

= AIR 1986 Supreme Court 703

(From 1982 ALL J 1121)

S. MURTAZA FAZAL ALI

A. VALADARABAI AND RAJCHANDRA  
MORA, II

Civil Appeal No. 1006 of 1982 D/ 1-3-1982

Shri Vijay Kumar Gangal, Appellant v.  
Maharashtra Prangy-Dang, Respondent

U.P. Mines, Building (Regulation of Mining,  
Lease and Development) Act (13 of 1952, S. 20(4)) —  
Enactment — Access of land — Unauthorised  
disposal on third leasing — Rent value stated in  
lease with costs and interest dependent by tenant

EDICTED BY THE COURT

on fire burning — Plus depicting the rate of rent increase caused by tenant on written statement — Depreciate does not become conditional thereby.

The deprecate stands in the course of the amount on the fire burning date made up of rent at the rate as claimed in the plan and interest and costs does not become not unconditional merely because the amount had remained in the written statement that the agreed rent was not at the rate claimed in the plan and he did not succeed in proving it in the trial. To continue, 2000/ statement would amount to conditional stipulation regarding the quantum of rent even in case where the amount alleged by the landlord is proved that the rent was agreed between parties. 1952 A.J.L.J. 1422. Affirmed. (Para 5)

The Rent Controller has a discretion in S. 20(a) as to how the parties' accounts are to be set off, ground of failure to deposit these rates, interest and costs within the period mentioned only. Dispute past in order following statement against his liability for interest on that ground, but it is not possible to set more any broadened ground/propagation that the discountary relief should be denied to the tenant in all cases where he fails to prove his case regarding the quantum of rent even though he had deposited the rent at the rate claimed by the landlord in the plan together with interest and costs within the time as required by S. 20-a. (Para 10)

**Case Related Chronological Para**  
AJS 1961 SC 276a. 1952 J SCB 331. 1951 A.J.L.J. 1029. 5

Mr S. V. Karikar, Sr. Advocate and Mr. B. B. Mohandas, Advocates with him for Appellant. Mr. Anandram Gupta and Mr. B. B. Sharma, Advocates, for Respondent.

**VARADACHARI, J.** — The short point arising for consideration in this appeal by special leave filed against the decision of a District Bench of the Allahabad High Court in Civil Revision No. 232 of 1950 turns upon the interpretation of S. 20(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1952) (hereinafter referred to as the Act). The appellant lawfully filed the rent on 1-6-1952 but recovering payment from the respondent tenant of a portion of payment received at Bham Ra Paga,

Agra Road, Meera (Uttarpradesh) on the allegation that a final lease for rent had expired on a rate of Rs. 300/- per annum and that the increase had come to be met by virtue of rent fixed in the rent note on the expiry of 30-6-1952. The alleged rent is the plan that the demand properly is shown beyond the maximum limit of Rs. 100/- per annum and is not included for use as a licence and is exempt from the provisions of the Act and that the respondent is in a position of rent by the clause of Rs. 1-6-52 for the period from 1-7-1952 to 30-6-53 and the amount of Rs. 300/- per annum of the previous together with arrears interest of Rs. 2-9-57 at Rs. 300/- per annum for the said period and interest paid of Rs. 72/- for the subsequent period from 1-7-1952 to Rs. 20/- per day.

2. The respondent opposed the suit contending that the property is situated within the jurisdiction of Provincial Municipal Council and was not a dwelling house as it was let out and is not governed by the provisions of the Act. He stated that the rent after 300/- per annum and contended that it is only Rs. 121/- per annum and that the respondent is not a tenant and that the rent was not included in the plan filed with the plan which according to the plan does not form part of the lease. He stated that he had executed the rent note mentioned in the plan and that the respondent had not paid the rent and that the respondent had not paid the rent and that the respondent had not paid the rent. He further stated that the amount shown in arrears of rent and interest profit was wrong and incorrect and that the respondent was not a tenant and that the respondent was not a tenant. Finally he contended that the matter was governed by the provisions of S. 20 of the Act and that the respondent was not a tenant and that the respondent was not a tenant.

3. The learned Fourth Additional District Judge, Agra who tried the suit granting his petition as a Judge of Small Causes Court found on 24-2-1953 that he had jurisdiction within meaning of the Act on the point of

production result in preliminary crop, and he told that though ultimately even the matured market grain and yellow in the place planted have originally been sown 27.7.1973 thereafter only the red market produce had been sown at a rate of Rs. 360/- per muam under the rate was applied No. 1844 the decision whether has been denied by the respondent, marketable the green and yellow market produce. On the basis of this an agreed rate was applied No. 1844 he found that the rate is Rs. 740/- per muam, against the respondent's rate that the old rate of Rs. 121/- per muam the result was that the discrepancy of the parties who the produce had been input earlier.

4. The respondent admitted that though the property is situated within the Municipal Municipal limits it is a private estate then it is situated within those limits and is therefore governed by the provisions of the Act while the appellant denied that it is situated within those limitations. The learned District Judge found on the evidence that the property is situated within two limitations of the municipal limits and falls within the exception and is governed by the provisions of the Act. He found that the tenancy for the period of 14 months under the rent was applied No. 1844 had come to an end by efflux of time and the parties are governed by it and that the rent is, however, governed by the provisions of S. 26 of the Act.

5. However, the learned District Judge considered the question whether the respondent is liable for eviction in this tenancy and found that the appellant had served notice of demand (paper No. 740) on the respondent and he failed to pay the rent claimed by the appellant and he is in such liability to be evicted under S. 25 of the Act. But the respondent had deposited the full amount of rent as claimed at Rs. 360/- per muam together with damages for use and occupation, interest and costs as required by S. 26(a) of the Act on 10.10.1973 a day after the tenancy date 10.10.1973. The learned District Judge found that the sum of Rs. 740/- was tendered in Court on 10.10.1973 and paid by the Court on that day and deposited into the bank on 11.10.1973 and that the money made on 10.10.1973 was valid and the payment made by demand is have been made on 10.10.1973 itself, but he accepted the

agreement advanced on behalf of the appellant that because the respondent had tendered in the money payment that the rent is Rs. 121/- per muam and it was rejected by the Court and a rent found that the rent is Rs. 360/- per muam the deposit of Rs. 740/- amounts amount of rent calculated at Rs. 360/- per muam together with interest and costs was not unconditional and therefore equal and S. 26(a) of the Act does not help the respondent. In this case the learned District Judge found that the sum for interest with amount of rent and amount paid at Rs. 360/- per muam from 1.10.1973 and interest costs being paid, let the amount deposited by the respondent towards the amount payable under the decree and granted that interest rate for the respondent to receive the proceeds.

6. In C.A.P. No. 112 of 1961 filed by the respondent against the payment of the rent Court is Division Bench of the High Court considered one of the conditions of S. 26(a) of the Act is that the tenant should unconditionally pay or deposit the entire amount due together with interest and costs and that S. 26(a) says that any amount deposited under S. 26(a) shall be paid to the landlord without prejudice to the proceedings of the tenant subject to the ultimate decree of the court, and they have observed that circumstances made before them on behalf of the appellant that the deposit is by unconditional shall be an unconditional part of the tenancy for use accepted by the landlord if accepted would render the provisions of S. 26(a) of the Act inapplicable. They have observed that if the tenant makes a deposit with a condition that it shall not be paid to the landlord until the rent is decided it would be a conditional deposit. They have found that in the present case the deposit was unconditional, merely because while depositing the amount of interest of rent at the rate of Rs. 360/- per muam, conditional to place the respondent had tendered in the money statement that the rent is Rs. 121/- per muam and not Rs. 360/- per muam and that pleading in the money statement that the rent is Rs. 121/- per muam and not Rs. 360/- per muam does not make the deposit conditional, in this case the learned Judges allowed the respondent's petition and decreed the suit with costs in both the costs.

7. The findings made (S. 7) accepted

to the learned District Judge on the preliminary questioning that he had jurisdiction to determine the just price available to the tenants purchased in the *Crown*. Therefore, it is not known for what reason the learned District Judge held that he had jurisdiction to determine the just price. The appellant came forward with the fact for acceptance of possession of the premises together with evidence of rent and income profits on the assumption that the tenant under the Crown lease paid no rent for a period of only 11 months and that it had come to an end by efflux of time and the premises were intended for use as a factory and the Act is not applicable thereto. On the other hand, the respondent's defence was that the property was owned within three kilometres of Provincial municipal limits and is governed by the provisions of the Act and that the continuous recovery of possession of the property is unreasonable. The learned District Judge accepted the respondent's contention on the question of applicability of the provisions of the Act to the premises, in question on the ground that it is located within two kilometres of Provincial municipal limits. S. 20(1) of the Act lays down that rent is payable in advance (2) no rent shall be recovered for arrears of a tenant from a building notwithstanding the determination of tenancy by efflux of time or on the expiry of a notice to quit or in any other manner. The present tenancy had been terminated after grounds mentioned in S. 20(2) of the Act and though the respondent is alleged to have been in arrears of rent to the extent of Rs. 1,960/- during a re-occupation under phase two for a duration of 104 for two less than three months and had failed to pay the same to the appellant within one month from the date of notice upon issue of a notice of demand, which is the ground mentioned in Cl. (a) of S. 20(3) of the Act. In these circumstances, the learned District Judge should have normally dismissed the suit for want of jurisdiction in view of S. 20(1) of the Act on the finding that the Act is applicable to the premises. It is not known why he did not do so, but on the other hand proceeded to hold that the deposit by the respondent is not unreasonable as required by S. 20(4) of the Act and ordered his arrears on that basis.

B. We entirely agree with the learned Judge of the High Court that the deposit of the amount of Rs. 1,960/- towards the deposit of the amount of Rs. 1,960/- per month is required in the

phase and interest and rent could not be paid or be not unconditional remedy, because the respondent had contended in the written statement that the rent was only Rs. 120/- per month and he did not intend recovering any rent. It is not possible in January 5, 2014 on the evidence alone by the learned District Judge in that actual amount is testimony of any defence regarding the question of rent even in case where the amount alleged by the landlord is more than the rent not agreed between the parties.

C. In this connection Mr. Karjee learned counsel appearing for the appellant relied strongly upon the following observations made by Bhikshoo Bhai J. speaking for himself and Pandey and Venkatesh in *Ch. Mangal Sen v. Banabhai Bhai*, (1992) 1 SCR 334 at p. 336. LAAR 1984 SC 1738 at p. 1739.

The provisions of sub sec. (4) will be attracted only if the tenant has, at the first hearing of the suit, unconditionally paid or tendered to the landlord the entire arrears of rent and damages for use and occupation of the building due from him together with interest thereon at the rate of one per cent per annum and the landlord's consent of the suit is implied thereon, after declaring therefore any amount already deposited by him under sub-sec. (1) of Sec. 20. There is absolutely no material available on the record to show that the alleged deposit of Rs. 1,960/- was made by the tenant on the first date of hearing and had, when a return was made, then the said deposit was made by way of an unconditional tender for payment to the landlord. The deposit in question was not so far as was made by the appellant on January 25, 1974. It was only subsequent, though that the appellant filed his written statement at the suit. It is noteworthy that out of the principal statements filed by the appellant defendant in the written statement was that rent he had stood ready, for the landlord for arrears of rent due, there was no default by him at the payment of rent. In the face of the said plea taken in the written statement, depicting the existence of any arrears of rent and deposit that there had been a default, it is clear that the deposit stated it was made on the date of the first hearing was not an unconditional tender of the amount for payment to the landlord. Further, there is also nothing on record to show that what was deposited was the correct

amount calculated in accordance with the provisions of Sec. 204B in these circumstances, without that the appellant has failed to establish that he has complied with the conditions specified in sub-sec. 4B of Sec. 20 and hence he is not entitled to be relieved against his liability for interest on the ground on one or several of the grounds of the said section.

10. The above principle cannot apply to the facts of the present case. In a that case it was not clear whether the deposit of the money amount was made within the time fixed in S. 204B of the Act whereas in the present case it has been found by the learned District Judge that the amount of rent in the plot claimed as the plant together with interest and costs had been deposited within the time mentioned in S. 204B of the Act.

11. Mr. Ranjan submits that according to the language used in S. 204A and S. 2B of the Act and reiterated that whereas the provisions of S. 2B are mandatory the provisions of Sec. 204A are in the nature of giving a decree for deposit on order of the court and does not make the deposit mandatory in S. 204A in part as order refusing the tenant against his liability for deposit on that ground and that the High Court interpreting the general provision under S. 115 C P.C. should not have interfered with the decision arrived at by the learned District Judge in ordering eviction and in decree that order especially in view of the fact that the respondent had failed to prove that the rent was only Rs. 120/- per annum and not Rs. 360/- per annum. We do not agree. The Act is a total piece of legislation which was in favour of tenants. Much because the tenant had failed to prove his case that the rent was only Rs. 120/- per annum and not Rs. 360/- per annum, the discretionary relief could not be denied as has been though he had deposited the amount of rent as the rent claimed by the landlord in the plaint together with interest and costs within the time mentioned in S. 204B of the Act. It is not possible to lay down any broad and general proposition that the discretionary relief should be denied in the broad or all cases where he fails to prove his case regarding the question of over-rent though he had deposited the rent in the rate claimed by the landlord in the plaint together with

interest and costs within the time as required by S. 204B of the Act.

12. For the reasons mentioned above we set aside the order of the learned District Judge with the decree of the High Court is called for in this case. The appeal fails and is dismissed with costs.

(Appeal allowed)

1986 A.L.J. 1, 1, 297

IN AIR 1986 Supreme Court 324

FROM Allahabad\*

IN CHANAPPA BUDOT AND  
V. KAMALDAS

Criminal Appeal Nos. 123 of 1984 (C. 263)  
1985

Rajghramdas Singh, Appellant v.  
Superintendent, District Jail, Kanpur and others,  
Respondents.

134. National Security Act (of 1980), S. 3, 4. — (Interim order) — Representation for its revocation made under S. 4 made to Central Govt. — (Single long stay, of 75 days in support of representation by Central Govt. — Further extension of leave between April 19 P. No. 123 of 1985, D/ 21-4-1985 (1985) Supreme Court of India, Art. 226.) (Para 2)

135. National Security Act (of 1980), S. 4. — Representation to Central Govt. — To whom to be addressed — (General Clause Act) (19 of 1979), S. 3(1). (Para 3)

136. Sec. 3, 4 of the General Clause Act, the Central Government. When the President's representative addressed to the President must therefore be considered as to be a representation properly addressed to the Central Government. (Para 3)

Case	Refered	Chronological	Form
AIR 1984 SC 309	1984 Cr. LJ 103	3	
AIR 1985 SC 1077	1985 Cr. LJ 108	3	
AIR 1985 SC 323	1985 Cr. LJ 107	3	
(1985) 1 SCR 108	(1985) 1 SCC 26	3	

\*W. P. No. 123 of 1985 (C. 263) (AIR)

1986 A.L.J. 1, 1, 297

Mr. J. N. Kachar, Sr. Advocate and Mr. B. B. Maheswari, Advocate with him, for Appellant No. 3; Messrs. Aditi Solicitor General; Mr. M. S. Gupta, Sr. Advocate; Mr. Gupta, Solicitor General; Mr. G. Srinivas Reddy, Mr. C. V. Subba Rao, Messrs. Seshana Reddy and Mr. B. N. Paddar, Advocates with them, for Respondents.

**CITIZENSHIP, INDENTURE, —** Special leave granted.

1. The appellants, Raghunatha Singh (late Chitray Raghav Indenture) under the provisions of the National Security Act, 1950. The indenture document was issued on January 20, 1952 by the District Magistrate, Rampur. Subsequently the application was returned on January 23, 1952 when the order of detention as well as the grounds of detention were served on him. The Government of Uttar Pradesh approved the order of detention on January 26, 1952 and reported the matter to the Central Government on January 28, 1952 under Art. 35 of the National Security Act. A representation under S. 3 of the Act was made by the applicant on February 10, 1952 and it was rejected on February 12, 1952. On March 7, 1952, the Advisory Board's opinion was received by the State Government and on March 16, 1952, the State Government expressed that the grounds of detention of the applicant should be one year. On March 14, 1952, the applicant made four representations to the President of the Union of India, the Prime Minister, the Government of Uttar Pradesh and the Chief Minister of Uttar Pradesh. Each of the representations was noted as 'Representation for relaxation/cancellation of detention order'. The paper in each of the representations specially recited S. 14 of the National Security Act which enables (a) the State Government to revoke an order of detention made by an officer specified by the State Government under S. 3, A of the Act and (b) the Central Government to revoke any order of detention whether made by the Central Government, State Government or an officer specified by the State Government. The representation addressed to the President was received by the President of Government on March 18, 1952. It is in the representation addressed to the Prime Minister transmitted by the Prime Minister's Secretariat on March 19, 1952, it was on May 24, 1952 that the Central Government reported the representation.

2. The main complaint of the prisoners in the High Court, who had filed the writ petition out of which the present appeal arose, on April 6, 1952 and before them the appeal is that there was an excessive delay, [it does not] in the disposal of the representations by the Central Government and for that reason alone the further detention was illegal and, it is stated, without authority. The delay in the disposal of the representation by the Central Government is indeed not disputed but what is claimed is that the representations though received in the Prime Minister's Secretariat and the Prime Minister's Secretaries on 19th and 20th March 1952 respectively, were actually received in the Ministry of Home Affairs on May 21, 1952 and dealt with on May 21, 1952. It is stated that there was thus no delay at all in the Ministry of Home Affairs. The learned Additional Solicitor General, who appeared for the Central Government, was unable to explain to us the cause for the delay in the President's and Prime Minister's Secretaries, but explained under the Rules of Secretaries, it was the Ministry of Home Affairs that was concerned with orders of detention under the National Security Act and as there was no delay in the disposal of the representation by the Ministry of Home Affairs and hence the applicant could not complain of any delay in the consideration of his representation. The learned Additional Solicitor General also argued that the representation to the Central Government should have been addressed to the Ministry of Home Affairs and not to the President or the Prime Minister. According to him, the President and the Prime Minister receive thousands of memorials and representations from every part of the country regarding a multitude of affairs and the representative could not be expected to be considered so preferentially as they would be considered had they been addressed to the appropriate Ministry. The argument given by the learned Additional Solicitor General was, partly, part of the delay, but it certainly cannot justify the excessive delay of delay in the case under S. 3(b) of the National Security Act, the Central Government cannot file the President and a representation addressed to the President must, therefore, be considered to be a representation properly addressed to the Central Government. It is to meet difficulties may be made for the same reason in



plans and did not participate in the appointment. Moreover, this allowance being made for the other schools was explained, the school for forwarding the representation from the President's Secretariat to the concerned Ministry, was unable to see in the present case that there has been adequate explanation for the delay. In fact, the site has filed an affidavit explaining the cause for the delay, in the President's and the Prime Minister's Secretariat. All that is known from the record before us is that the representation was received by the President and the Prime Minister respectively on 28th and 29th March 1990 and thereafter, after about one month and one week, the representation was received under Ministry of Home Affairs. We have no information as to how these representations were dealt with in the President's and the Prime Minister's Secretariat. The learned Additional Solicitor General found himself at a loss to explain the delay and partly, the doctrine lay on of the wholly unexplained and unduly long delay as the disposal of the representation by the Central Government; the further discussion of this aspect must be held illegal and be sent back to the Government for the disposal of the Court in *Saharabhoir v. Union of India*, 1990 (2) SCR 129 (Karnataka Bench); Union of India, AIR 1991 SC 1027 and *Sat Pal v. State of Punjab*, AIR 1991 SC 2219. The nature of the power of review not conferred is stated by the Central Government under S. 11 of the COPEPCOA, but which is same as under s. 14 of the National Security Act, was explained by the Court in *Sat Pal v. State of Punjab* (supra) in the following words:

The making of an application for permission to the Chief of the movement under S. 11 of the Act is therefore just of the constitutional rights created but against the Government under it is relying on preventive measures. While Article 22(1) contemplates the making of a representation against the order of detention to the detaining authority, which has to be referred by the appropriate Government to the Advisory Board constituted under S. 14 of the Act, Parliament has, in its wisdom, created S. 11 and conferred an additional safeguard against arbitrary measures against "

Government is now the case in *Saharabhoir v. Union of India*, AIR 1991 SC 1029. In this case it was held that where an earlier representation to the Central Government had been properly disposed of, the fact that the second representation to the Central Government was not so disposed of could not vitiate the decision to be reviewed. The specific, therefore, indicated that the application should not be set aside on grounds of delay.

appeal allowed

1996 ALL L J 289

B. L. YADAV J.

On Probable and another: Petitioners v. Deputy Director of Consultation Material and Respondents

Civil Misc. Writ Pet. No. 488 of 1991: O. R. 11 1995

[42] Civil P.C. 1980, S. 11 O. R. 1, B. L. J. — Representation — Right not by individuals as representative capacity for exercising power as possession of power based upon exercising with due right to the land to pasture — Union some jurisdiction of Court and non-judicial of parties, i.e., *State of India and Union, Director of Forest of plaintiffs* — Court and appeal therefore dismissed — Defendants held liable of land — Direction a finding on *State of India*.

Where as an earlier representation not by certain members of a village for relief of possession upon the land, which, directed from exercising with due right of the land based on pasture land by the plaintiff and others residents of the village and it was the plaintiff alleged and proved that the Civil Court had jurisdiction to exercise the law and that law was not barred by non-judicial of parties, i.e., *State Government and the Union of India and the defendants* is reiterated that the law and the law and the appeal preferred was dismissed by declaring defendants, in order, the judgment and decree in the suit was not binding on the *State of India* even though the State and the *State of India* might

We must also add that this is not a case of repeated representations to the Central

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that there was relief in respect of the extent of the map papers, the plaintiffs are not obliged to produce the State Government and the Gada Sabha and such not was acceptable by the Co-4 Court only. (See Pindani v. Assistant, 1979 AIR 12-464)

4. In the instant case the plea about the jurisdiction of the Co-4 Court was also raised and para No. 4 was framed about the plea of jurisdiction and it was held that the Co-4 Court has jurisdiction to try the case. Further another plea about the plea of jurisdiction of necessary parties was also raised and para No. 3 was framed on that point and it was held by the Co-4 Court that the suit was not barred by the provisions of the necessary parties. A certified copy of the judgment has been filed in Addendum-D to the petition, which has been perused. As the matter was the residents of village has filed the suit and they had not previously brought up the case originally and not produced appeal also, which they lost, hence it cannot be said that the matter was way of collusion matter and further it is well settled that a party cannot be permitted to take successive petition in the Court, to blow right and later to blow, but and could to suggest the plea of jurisdiction. This doctrine applies not only to the successive stages of the same suit but also to similar suit.

10. In the instant case in the instant case the plaintiffs alleged and proved that the Co-4 Court has jurisdiction to entertain the suit and that suit was not barred by the provision of necessary parties, as State Government and the Gada Sabha and the findings were recorded in close form in the instant case. The plaintiffs preferred appeal also and that also was the case, but before those findings regarding the Co-4 Court having jurisdiction or otherwise the suit and that point was not brought up non-judicially parties (State Government and the Gada Sabhas) cannot be permitted to take successive plea that subsequent taken in the instant case. (See Hanuman v. Bala, 1974 AIR 1940; Aboorajayam v. Pula Pundar, AIR 1973 AIR 444; Kanti Singh v. Pundar, AIR 1973 AIR 444). It is then beyond doubt that the matter was in respect of the land in dispute was maintainable in the Co-4 Court and as the matter plea has been raised in the petition by the Gada Sabha and the village has was brought out in merits, the appeal was also filed,

hence that judgment and decree in that was would operational in the petition, as no new case, constructed, was petition filed and pending a decree be permitted to wrangle out of the petition.

11. The next question that falls for determination is to whether the defendant's land is given under S. 3(14) of the Act which covers private land or not, which will depend on the nature of land in respect of which the matter was was filed, it is better to see the statutory provisions of S. 3(14) of the Act, which is as under :-

3(14) Land except as in 3(1) and (2) and Chap. VII means land held, or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes paddyland and poultry farming.

It is then clear that in the instant defendant, the private land has not been included, whereas in the definition of land in the instant Act, in C. P. Tanmay, AIR, 1978 the definition of land read as follows:-

Section 3(14) - Land means land which is let or held for growing of crops or is private land, or for pasturage. It includes land covered by water used for the purpose of growing sugarcane or other produce but does not include land for the use being occupied by a building or apparatus or other other than building which are improvements.

12. By comparing the instant definition of land as contained under S. 3(14) of the C. P. Tanmay Act, and that under S. 3(14) of the Act there appears to be a reasonable change. The pasturage appears to have been definitely omitted from the definition of land under S. 3(14) of the Act.

13. There is a Latin maxim, *Abolitionem nonneque non negat*, which means, means that when you have plain words of statute together of only one interpretation, no interpretation of that is required. There is another maxim "A *significatio non negat bonum*, which means that you must not carry the words of a statute.

14. Courts in Statute Law. With Editors, paragraph observed as follows:-

The intention of the legislature is not to be

specialized one. "In a Court of law, or equity, or for the legislature, it would be to design new systems not only for the business, maintained from what is law chosen to exist, either in respect of ends or in reasonable and necessary employment." (See *Commentaries on Aristotle* v. Book of Arts, Book VI, 10-11 AC22-23C.)

15. I am of the view, that it cannot be assumed that the parties' knowledge has been caused inadvertently from being maintained closely as the defendant under S 3(1) of the Act, but in that event she is not the duty of the Court to order or supply the status system, which means that the words of a statute need not be interpreted to mean what for which provision has clearly and undoubtedly not been made. A Court has to interpret the words of legislation as they stand and even though there appears to be some contradictory language the language used in an Act, no matter how or situated or in particular we cannot make good the difference which are left there.

16. In the instant case the passage or pasture land which was included in the definition under S 3(1) of the E. F. Tenancy Act, was deliberately covered by the defendant under S 3(1) of the Act. This cannot be understood. This should not go unnoticed. The only possible inference that it was a pasture land, is that case that would not be required by the definition of land under the Act. I am of the view that the other evidence is sufficient to show that the Revenue Court is not the forum for such as respect of pasture land, and the Civil Court is the only forum.

17. As the defendant was not responsible to the Civil Court in respect of the land in dispute and that judgment and decree became final and that was a final judgment and decree, it was not a final judgment and decree in the instant case. The matter was also lost by the plaintiff who were the authors of the judgment and that was a representative suit and all the allegations were made in the suit which could have been made by the Civil Court. The Civil Court was also a body for the benefit of the real residents of the village and the same thing was performed by the

plaintiff by filing a suit to remove the present possession, who were defendants there. From being a final judgment and decree in the land in suit and decree standing with the stage of the land in pasture land used by the plaintiff, and other residents of the village. I am accordingly of the view that the judgment and decree in the instant suit was binding and enforceable. I am of the view that the Civil Court is not a final court of appeal in the instant suit, especially in the respect of the Civil Court and the State was represented by the plaintiff there and all the evidence was taken could have been made by the Civil Court. Respondent 4 the Civil Court being bound in the instant judgment and decree, cannot challenge the plaintiff's claim and rights in the instant suit. In spite of the judgment and decree in the instant suit, the nature of the possession could not be entered in the instant suit. It is not a final judgment and decree for the instant purpose the plaintiff had objection under S 3(1) of the E. F. Consolidation of Holdings Act and that should have been allowed by the consolidation authority.

18. In view of the documents made heretofore, the consolidation authority has maintained an oral appearance for the instant suit.

19. In the result, the plaintiff's judgment is allowed with costs. The orders dated 14-10-1979, 24-12-77 and 11-7-77 are hereby quashed. As a necessary condition, the plaintiff shall be ordered to file the relevant papers and orders heretofore in the Court at Deogarh and they would be entered in the land revenue records accordingly.

Prakash Chandra



C. B. Smith, for Petitioner, Secretary  
Cited by Respondents.

1. **BACKGROUND.** — The terms on which it put non-pecuniary Chibwe Ltd has challenged the validity of measures proceedings initiated against him for arrears of electricity dues in arrears of last payment under S. 27(1)(b) of the L. P. & A. and L.E. Act of 1964 and ruled that the order for arrears referred to is the Act and Rules.

2. The opposite party No. 1, L. P. & A. Petitioner, failed to enter into an agreement with the petitioner Chibwe Ltd on 20th November 1976 under which it was to provide an essential minimum service for running his load and not to cut off for a guaranteed period of five years. It insisted the minimum connection in the premises of the petitioner and started supplying the electricity to him without a contract. In January 1967 to August 1976 opposite parties sought to recover some deposits due from the petitioner as arrears of electricity dues. Petitioner agreed to pay some deposits, but the Court for relief under the 1964 Act and Constitution.

3. We have heard learned counsel for the parties and have perused the record.

4. Learned counsel for the petitioner submitted that the electricity connection of the petitioner was discontinued in June 1973 and thereafter no electricity was supplied to him. Later on he transferred his unit and requested the opposite party No. 2 for setting the arrears finally after discontinuing the connection. In June 1973 connection to the unit could be legally recovered from him as electricity dues. On the other hand, learned counsel for the opposite parties contended that neither the power supplied to the petitioner was discontinued after June 1973 as claimed by him nor was request from him for terminating the agreement was received by the opposite party No. 2. But even assuming the latter request was received by the opposite party No. 2 under the terms of the agreement the petitioner was liable to pay minimum charges up to 31st January 1976.

5. In order to appreciate the argument of the learned counsel for the petitioner it is necessary to have a look at the terms of the

agreement dated 20th November 1976. Clause 4 and 5 of the agreement read thus:—

4.1 The consumer shall pay, for all the electrical energy supplied in the meter and in accordance with the conditions subject to the meter being and the signing of this agreement shall be held to imply the consumer's acceptance of the terms and the fact it does for the meter being and in any subsequent modifications or alterations thereof.

5. A fixed charge of Rs. 140 per month will be levied upon the consumer each month in addition to the charge for electricity consumed.

6. Provided an estimate due to an over consumption from the first day of the month of April following the date of installation supply a meter is made by the Electricity Board the value of the energy supplied for essential or agricultural purposes or for installation at the meter demand including the deposit forfeited, it may still fall short of the guaranteed minimum as specified in the meter and the consumer shall pay the full guaranteed minimum amount as specified therein. The Executive Engineer, Hydrabad District, Warangal on behalf of the Chairman shall have the right to disconnect and remove the last service connection and ensure, if the consumer fails to pay the minimum in the guaranteed minimum payment within one month of the receipt of a bill from the Electricity Board paying upon him to pay the full minimum, provided that the discontinuation is certain of the last or last, under the terms or under any clause of the agreement, such as for non-payment of electrical dues or any other debt of the Electricity Board, so that it shall not release the consumer from his liability of paying to the Electricity Board the minimum charges for the whole period of five years.

7. 10. 1. 1. 1. 1. 1.

8.1 The consumer shall not be in a direct connection with the terms of the Electricity Board to terminate the Agreement before the expiration of five years from the first day of April following the date of commencement of the supply connection under the Electricity Board may give no payment subject to the condition that the consumer pay the minimum

guaranteed charges for five years or damages stipulated in Clause 4(b) hereof. The consumer has, however, not disavowed the Agreement as they have after the said period subject to sub-clause (2) herein on going to the Electricity Board and has also stated that their notice as being, in their belief and upon the expiration of the period of such notice the Agreement will cease and determine and no amount for the settlement of all amounts outstanding between the Electricity Board and the consumer and without prejudice to the rights or remedies of and which may have accrued to the Electricity Board hereunder is the intent.

(2) After the expiry of the said maximum period of five years the consumer will not be bound to remain the consumer. But if it does so the supply will be deemed to have been continued by the Electricity Board one year to year basis under terms and conditions being mutually understood and the Electricity Board shall not be bound by the decision or mode of payment, provided that the consumer never taking supply during the course of a year otherwise supply of the demand for payment be shall be liable to pay the maximum guaranteed charges as yearly basis.

#### (3.6.14)

6. A plain reading of the aforesaid provisions of the agreement indicates that the petitioner had to pay maximum charges for the guaranteed period of five years and thereafter on yearly basis till the termination of the agreement by him by means of the written notice provided if taking of the supply was stopped during the course of the year he had to pay maximum charges for that entire year. The being to the detriment of the petitioner that no electricity was supplied after 1972 and also he had written to the opposite party No. 3 for discontinuing his connection permanently by letter dated 4-4-1975 and 13-4-1975 and his help notice. Under the terms of the agreement he has to pay maximum charges up to 31st March 1976 while according to the stipulation in paragraph 5 of the counter-affidavit which have now been deposed by the respondent affidavits the amount sought to be recovered from him relates to the period up to September 1975.

7. It is now contended by the learned

magistrate that the opposite party No. 3 was not legally justified in serving recovery certificate to the opposite party No. 4 under S. 17 of the U. P. Government Electricity Undertaking (Recovery) Act, 1956 without serving a notice upon the petitioner under S. 3, in paragraph 11 of the counter affidavit which has not been denied in the respondent affidavits. The opposite parties have stated that maximum amount under S. 3 was sent to the petitioner per registered post on 12.12.1970. Explanation 1 of S. 3 provides that the sending of notice by registered post shall be deemed to be sufficient notice on the person concerned. The being so, since a notice under S. 3 was sent to the petitioner per registered post on 12.12.1970 the petitioner cannot claim that recovery certificate under S. 3 was issued against him without sending a notice of demand under S. 3 of the aforesaid Act. Thus the contention of the learned counsel for the petitioner has to be rejected.

8. Learned counsel further contended that modes of recovery of land revenue contemplated under S. 139 of the Act relate to the recovery of land revenue only and not to other rates of money which are recoverable as land revenue. According to him such dues can be recovered in respect of land revenue only by issuing mode mode provided under sub-section (1) of S. 136 of the Act and not by arrest and detention of the petitioner as made provided under S. 139(1)(a) and (b) of the Act. The procedure for recovery of arrears of land revenue to be found in S. 139(1)(c) and other cognate provisions in Chapter II of the Act. Section 139 of the Act reads that —

139. Procedure for recovery of arrears of land revenue. — (1) An arrear of land revenue may be recovered by any one or more of the following processes

- (a) by serving a writ of *distrahit* or a writ of *agere* or an *agere* *distrahit*;
- (b) by arrest and detention of his person;
- (c) by attachment and sale of his movable property including produce;
- (d) by attachment of the holding in respect of which the arrear is due;
- (e) by lease or sale of the holding in respect of which the arrear is due.



(i) by attachment and sale of other immovable property of the defaulter; and

(g) by appointing a receiver (being property mortgagee or mortgagee of the defaulter).

(3) The order of any of the processes mentioned in sub-rule (1) shall be added to the recovery in the land revenue in the amount of land revenue.

9. Section 77 provides three modes for recovery of arrears of land revenue, while in 1914, 1915, provide procedure to be followed in case of each of three modes. The procedure to be followed with any reference to the modes provided under Clause (1) and (2) of sub-rule (3) of § 279 are contained in Sections 281 and 282 which read thus:

281. Arrears and distresses. — Any person who has defaulted in the payment of an arrear of land revenue may be arrested and detained at custody up to a period not exceeding 15 days unless the arrears including costs, if any, recoverable under sub-rule (2) of Section 279 are sooner paid.

Provided that no woman or minor shall be taken to arrest or detained under this rule.

Provided further that no person shall be taken to arrest or detained for an arrear in respect of a holding of which he is not the proprietor merely because of his joint responsibility for the payment of land revenue under Section 242.\*

282. Power to proceed against income of defaulter against immovable property. —

(1) If any arrear of land revenue cannot be recovered by any of the processes mentioned in Clause (a) to (c) of Section 279, the Collector may realise the same by attachment and sale of the arrears of the defaulter in any other immovable property of the defaulter.

(2) Some of money recoverable in arrears of any specified land, may be recovered by process under the orders from any immovable property of the defaulter including any holding of which he is a proprietor or tenant.

10. After going through the various provisions of the Act and the Rules we find that, § 279 in 280 and rules framed thereunder make no distinction between land revenue and some of money recoverable in arrears of land revenue. It is only in § 281 that a distinction

has been drawn between arrears of land revenue and some of money recoverable in arrears of land revenue. While sub-rule (1) of § 280 provides that if any arrear of land revenue cannot be recovered by the processes mentioned in Clause (a) to (c) of sub-rule (3) of § 279 the same may be realised by attachment and sale of immovable property of the defaulter. Sub-rule (2) of § 280 provides that some of money recoverable in arrears of land revenue, but not due in respect of any specified land, may be recovered by process under the provisions any immovable property of the defaulter including any holding of which he is a proprietor or tenant. In our opinion, the distinction between the two sub-clauses of § 280 is that while under sub-rule (1) which deals with the recovery of arrears of land revenue the dues can be realised by attachment and sale of the immovable property of the defaulter only if the same cannot be recovered by any of the processes mentioned in Clause (a) to (c) of sub-rule (3) of § 279, there is no such restriction under sub-rule (2) which deals with the recovery of some of money recoverable in arrears of land revenue which means that for recovery of such dues revenue could be taken in the mode provided in Clause (1) of sub-rule (3) of § 279 irrespective of the fact that the same could be recovered by other processes mentioned in Clause (a) to (c) of sub-rule (3) of the section. Hence we are unable to accept the contention of the learned counsel that the modes provided under § 279 are not available for recovering the sums of money recoverable in arrears of land revenue and that such sums of money can be recovered only by the mode provided under sub-rule (2) of § 280. The arrears of land revenue and the sums of money recoverable in arrears of land revenue are kept in paragraph § 279 and subsequent provisions of Chapter X of the Act except § 280 which deals with the mode prescribed under Clause (1) of sub-rule (3) of § 279. Only because some distinction is made between the land revenue and the sums of money recoverable in arrears of land revenue under § 280, it cannot be said that the other modes contained in § 279 are not available for recovery of the sums which though not land revenue are recoverable in arrears of land revenue.

11. Learned counsel heavily contended that

recourse to the provisions of Chapter 2 of subchapter 11 of S. 279 could be taken only if it was proved that the possessor did not possess sufficient movable and immovable property and other means to discharge his liability. In our opinion the construction of the law does not make this without substance. The intent of the legislation can be well inferred from Chapter 12 of S. 281 which provides that after the most diligent shall be brought without delay, the police officer who issued the warrant and shall not be detained in custody unless there is reason to believe that the proceeds of detained will compel the payment of the whole or substantial portion of the arrears. In our opinion recourse to the mode provided under Chapter 12 of subchapter 11 of S. 279 for recovery of the arrears of land revenue can be taken only if a person possesses sufficient means to discharge the liability and not otherwise. Our view finds support from the decision of the Supreme Court in *State of Mysore, Appeal No. 100 of 1952*, reported in AIR 1954 SC 153. The Supreme Court while interpreting the various provisions of the Act relating to the procedure for recovery of arrears of land revenue contained in Chapter X of the Act observed thus:

"Under the sub-rule there is a necessity to enquire in the question whether the detention of the defaulter would be productive of payment of the arrears or a substantial portion thereof. The officer concerned is, therefore, required to decide on the basis of the material before him and any evidence rendered or submitted made by the defaulter whether there is any justification for detaining him and it is only after he is satisfied that the detention of the defaulter will compel him to make the payment of the whole or a substantial part of the arrears he can order his detention. If he is not so satisfied the officer is under an obligation to release him."

In the result, the writ petition fails and is dismissed with costs.

Prayer dismissed.

## 1954 ALL E.R. 408

*Mrs. Swabren and Chemicals Ltd*

*vs.* *Comptroller Wroughton and Measures*,  
L. P. Jackson and another Respondents

Civil Appeal Nos. 9413 of 1951, 5414 of 1952 and 5634 of 1951, 167, 207 to 209, 244, 245 and 1419 of 1950 and 676 of 1950. D. 12/1/54.

*L. P. Wroughton and Measures* (Respondents) *vs.* *Mrs. Swabren and Chemicals Ltd* (Appellants). — Appeal allowed. — Wroughton and Measures having nothing to do with commercial transactions — not amenable to jurisdiction of Inspectors under S. 10 to go for same verified and stamped (Bansal *vs.* *Wroughton & Measures* Act 1934, S. 25, 26).

The Inspectors can exercise jurisdiction under S. 10 read with S. 3(2) of the Act only where a weight or measure is used in commercial transactions or in connection with any movement of duty etc. or in connection with the assessment of any work done or services rendered. If somebody uses weights or measures for determining the quantity of anything for his own use or for a purpose having nothing to do with commercial transactions (choosing the public or with an assessment of duty etc. or with an assessment of any work done or services rendered, then he cannot be called upon by the Inspectors with a view of verification to go such weights or measures verified and stamped. The definition in given in S. 3(2) is too wide "Namely, the weight or measure which is used in commercial transactions, but the weight or measure which is used for making an assessment of royalty, toll, duty or other dues, or for making for commercial a long work done or services rendered, also comes within the scope of the expression 'use in transaction for trade or commerce'." (Para. 1)

Where a man of the manufacture of matches rather the substance, he use a fixed with the table containing divided and have sample to show that the table were fixed with the required quantity of loading material and the substance therein are not used for commercial transactions or for any purpose of any movement of money duty dues. If the table

RECORDED & INDEXED

operating raw material suppliers are utilised mainly for operational purposes (that is S. 10 and S. 12) provided for applied in such tasks. In also in the case of manufacturing of sulphur the average tasks containing raw material and intermediate products are made high based the steps of S. 10 of the Act. (Para. 11.))

However, in case of manufacturing of paper, since the raw are being submitted for the purpose of assessment and the task rules are made differently the raw can they are covered by Cl. 10 of S. 10 and which, all of the raw. The taxpayer therefore does have the permission to call upon the manufacturers of paper to make arrangements for giving their raw material and submit to him.

(Para. 12. 10)

V. B. Singh and S. P. Gupta, for Petitioner  
Sunderbani Cement, for Respondent.

**ON PRAYER, P =** There is a request to set aside the order under Art. 106 of the Constitution of India by the petitioner challenging the order of the respondent No. 1 and the reasons stated by respondent No. 2 which are under shall the wet process.

1. Whereas, the petitioner of the first set is engaged in the business of manufacture of synthetic rubber, the petitioner of the second set engaged in the business of manufacture of sulphur and the petitioner of the third set produced a common case, i.e. paper in their industries. Through the business of petitioner manufacture different commodities, but to see the validity of the order of the respondent No. 1 and of the reasons stated in respondent No. 2 there are petitions can be conveniently divided regular and limited they are considered and are being decided by a common order.

2. The petitioner of the first set produces synthetic rubber, for which a highly sophisticated machinery was imported from U.S.A. In the factory premises, there are several tanks, some of them are used for storing raw material, i.e. alcohol and in some tanks, intermediate products, namely styrene and solution called slaps, which are further used, are stored. In third type of tanks known as process tank, latex from which final product

is working rubber is manufactured is stored. After process is over the subject which is nothing but a processing of same solid product, rubber is further solid product of the process is manufactured.

3. In para. 3 of the supplementary, respondent affirms it is stated by the petitioner that only two tanks in legal form namely, processed synthetic slaps are manufactured. Raw material for manufacturing synthetic rubber is alcohol, which is also a legal material. No. 1 or one of the petitioner submit the tanks are there in its factory premises to store the raw material, i.e. alcohol, and the intermediate products, i.e. styrene and solution slaps. It is categorically stated by the petitioner that tanks used for the purpose of storing the intermediate products, i.e. styrene and solution slaps are accessible to the petitioner of the respondent No. 2 and there is no dispute as regard to them. The dispute according to the petitioner relates only to those tanks which contain raw material, i.e. alcohol and a product known as latex, which is not sold by the petitioner as such. The petitioner has been called upon by the respondent No. 2 to make arrangements for measuring weighing instruments of all the tanks which are presently utilised by pooled system into the standard weight or kilogram system and get them measured and stamped by the respondent No. 1. The case of the petitioner is that the respondent No. 2 has jurisdiction to regulate those tanks only which are covered by S. 10 of the L.P. Wipflin and Masses (Manufacture) Act, 1950 after then the Act (1951) and not as respect of the tanks, which are used for storing raw material, i.e. alcohol, and intermediate product namely latex, which are not sold as such. Since respondent No. 2 must remove in respect of those tanks area, which are neither used for sale or commerce or which are not utilised for the purpose of assessment of tanks they, the respondents of the order of the respondent No. 2 and of the reasons of respondent No. 2 which are **Annexure "I" and "II" B.P. 8, 17** respectively in the first set petition, has been accepted. It is held that the measuring device fitted with the tank, is for operational purposes and not for sale. The plant is automatic and is more operating whenever material is given quantity is filled in the tanks and the collection by



No weight or measure of weighing or measuring instruments shall be used for sale or use, in any transaction for trade or commerce, or for sale or delivery for such use unless it has been certified or stamped in the manner prescribed and stamped in the prescribed manner by an inspector with stamp of verification.

The expression "measuring instrument or equipment" has been defined in S. 2(p) of the Act. 1954 which runs as follows:—

"But not in transactions for trade or commerce with a grammatical system and against a gramatical measure, the purpose of determining or declaring the quantity of anything in terms of measurement of length, area, volume, capacity or weight or in combination with—

(a) any contract, whether by way of sale, purchase, exchange or otherwise; or

(b) any statement of value, bill, duty or otherwise; or

(c) the statement of any work done or services rendered, where, then or otherwise, research or scientific studies or is intended to be used for house-hold purposes.

Section 2(p) of the 1954 legislative provision that the weight or measure of weighing or measuring instruments or similar used or to be used for purposes transaction for trade or commerce or for being, used unless it has been certified and stamp in the prescribed manner by an Inspector of the Department. The object of the enactment of the Act (1954) was to protect the interest of the consumer. The legislature would appreciate that fact that the consumer should get the quantity which he paid for and that he should not be cheated by a trader. The general object of the statute or enactment relating to weights and measures is to protect the interest of the public, and prevent fraud or imposition. Ordinarily it is intended to provide a method by which purchasers of commodities may protect themselves from undue weights or measures and be enabled to ascertain quantity of property bought and paid for. It will be seen from S. 2(p) which defines the expression, use in transactions for trade or commerce that the language in section 2(p) has been used. In the case means has been used. In the definition of "contract" does for imposing any foreign words

and S. 2(p) there is little scope for interpretation of S. 2(p). There is no need to take aid of dictionary to find out the meaning of trade or commerce. This word is already mentioned in the same section in clause (a), (b) or (c) of S. 2(p). The point is when is article prohibited in S. 2(p). To understand it in more simplest terms, S. 2(p) prohibits use of any weight or measure in an transaction for trade or commerce meaning in the use for the purpose of determining or declaring the quantity of anything in terms of weight or—

(a) any contract, whether by way of sale, purchase, exchange or otherwise; or

(b) any statement of value, bill, duty or otherwise; or

(c) the statement of any work done or services rendered.

So if any weight or measure is to be used in connection with any commercial contract as defined in S. 2(p) or in connection with an statement of value done or in connection with the statement of any work done or services rendered then it necessarily requires to be verified and stamped by the Inspector with the stamp of verification. If the weight or measure is such, which is not used for any commercial contract by way of sale, purchase, exchange or otherwise or in connection with any statement of duty etc. or in connection with any statement of any work done or services rendered then the legislative prohibition will not extend to such weight or measure. An exception has been carved out in S. 2(p) for the weight and measure, which are used in relation to research or scientific studies or in restricted households for household purposes. The exception, made provides a clarification that the weight or measure which has nothing to do with the commercial transaction or with the statement of duty etc. or statement of any work done or services rendered then it will not be extendable to the prohibition of the Inspector with stamp of verification. The Inspector can involve the prohibition only when a weight or measure is used in commercial transaction or in connection with an statement of duty etc. or in connection with the statement of any work done or services rendered. Household uses weight or measure for determining the quantity of any thing for his

and satisfaction in the workplace having positive effects on the effort exerted by employees in an office setting. In public, or in a non-governmental setting, staff and staff or organizations can work alone or in teams and find them to, however the effort spent by the employees with respect to the motivation to give the organization the best performance, coordinated teamwork. The definition of the term "group" is not widely known. In a light of research, a team is most often seen as a group of people, but the concept is very large which is used for making a comparison of results with data or other data for the making the comparison of work done or work done. Therefore, also within the limits of the organization and its structure for the work, the team is a

4. The values of the order passed in, the quantities and the amount raised by the response in the course of the partnership had to be stated in the necessary legal process. The same unfortunately is a proper model with the case of the partners of trade relations.

80 First, we take up the case of the presence of the intermediate in the production of the final product. First, factory does not have a stock of units containing raw material and the intermediate product. The pattern has challenged the possibility of the impulse unit, it is replied to the bank. Company has material and one of the intermediary product, namely, iron. The bank continues detailing an intermediary product, namely, iron, and indicates that it is completely unnecessary to manufacture of iron duty. In the end, question whether the bank definitely has material and one of the intermediary product, namely, iron, but within the scope of § 5, it is said with § 5, § 5, § 5. Couple, named counsel for the purchaser to mention for the bank containing raw material and iron, are pretty well convincingly, but in the end, evidence for the purpose of maintenance of interest rate. It is to be made clear in the beginning of the most of § 5, § 5 is mentioned that cannot be proved in the case of the purchaser, of iron material and that is, respectively, as, the bank of iron have not been able to find for the purpose of maintenance of interest rate on interest material. What can be seen is whether it is not the case of § 5 is applicable to the case of the maintenance of

[illegible]

ii) The cost of the parameter of interest is always the same as that of the parameter of the limit case. The only difference between these cases is, of course, the degree of belief in



15. And now the question arising as to the nature of duties in this is to be approached from another angle. It is admitted by the petitioners that their wares being collected in the Excise Department. The case of the petitioners however is that the wares are being collected in the Excise Department for administrative purposes. In para. 2 of the respondent's affidavit it is stated that the wares are being collected

In the Excise Department for three main reasons:—as to how much quantity of liquor has been manufactured and is stored in the various cells in order to prevent leakage and theft. The third of the respondents is that it is implied in the collection of the wares that they are being collected for the purpose of assessment and hence they are covered by it. It is also contended by the respondents that in the publication of the rules necessary for the purpose of assessment of excise duty there only the authorities of the weight and measure Department is called upon to verify the correctness of the measures being employed by the Excise Authorities and hence are not competent to interfere with their own weight or measurement. It has in the submission been put—“Can the Excise Authorities exercise administrative control over the distillers?” There are various questions. Excise duty was never any power over the Excise Authorities to have administrative control over the distillers. In one aspect, the administrative control is vested in the officers of the distillers. The only function of the Excise Department is to collect and levy the excise duty, and to take measures to prevent the duty evaders. So all the powers of the Excise Department had long terminated. The petitioners have now challenged the collection being done by the wares pursuant to the ground that though the collection of the wares must necessarily and justify Excise Authorities has been matching with their licensing by collecting their wares. Under the jurisdiction of the Excise Authorities for collecting the wares is challenged and a decision is taken by the appropriate authority in appropriate proceedings that the Excise Authorities are not empowered to collect the wares in connection with the assessment, there is no jurisdiction in making the contrary view that the collection of wares wares is not being done as regard to assessment of duty. It

is evident from the evidence being clearly, the main purpose that the collection is being done in connection with the assessment of duty duty within the meaning of it. It is 5. 2(g) in those cases it is not necessary for us to go into the details of the means law. In an additional fact, must be held that collection of wares is being done for assessment purposes, because there is no other purpose of collection being done by the wares people. The petitioners, having now challenged the jurisdiction of the Excise Authorities by collecting the wares the only question that arises for our decision whether the collection is being done by the Excise Department for administrative purposes or to ascertain with the assessment of the excise duty within the meaning of it 19 of 5. 2(g). The petitioners having failed to show that the administrative control of the distillers vested in the Excise Authorities, the only evidence that can be drawn is that the wares are being collected by the wares pursuant to connection with the assessment of the excise duty.

16. We are therefore of the considered view that collection of the wares issued in the distillers is fully covered by it, 19 of 5. 2(g) pursuant to 19 of the Act, 1956. The petitioners therefore, does have the jurisdiction to put upon the petitioners of the third set to make arrangements regarding their wares assessed and verified by law.

17. In the result, the Wines Petitioners Nos. 1423 and 1534 of 1961 are allowed and the orders of the Controller and Judge issued by the Inspector which are made Appellate in the above-mentioned petitions, as so far as they relate to wares containing new material and have in the case of the petitioners of the first set, and to the wares containing new material and secondary products in the case of the petitioners of second set, are quashed. The wares persons of the petitioners of the third set are dismissed. The parties are left to bear their own costs.

Order accordingly.



1986 ALB. L.J. 497

R. V. SENGLE AND R. A. SHERMAN, II

Ray v. Sherman, Plaintiff v. State of A. P. and others, Respondents

Holston Courier-Post Print. No. 202 of 1981-82. 15 H 557

(A) National Security Act 144 of 1960, § 3(2) — Persecution detention — Public order and law and order — Circumstances of numerous first persons on whom detentions were on good cause and of attempts to commit murder and kidnapping as law-enforcing action of Govt employees — Incidents denied value to public order

The first ground of detention related to maintenance of public order: events must be serious enough. There was nothing on record to show that the detentions had been disruptive enough, from the members of the public to an administrative member. The alleged members as contained in ground No. 1 affected only a single individual with whom the detentions was not in good terms. The second ground related to avoidance of attempts to commit murder. The third ground related to military alleged to have been sustained by the detentions and the success of meeting were during emergency relief of Government employees.

Held that none of the three grounds related to public order: ground each of them related to maintenance of law and order. Therefore detentions on that basis was not valid. ALB 1981 SC 18. Rat. on. (Para 7)

(B) National Security Act 144 of 1960, § 3 — Detention — Alleged subversive activities in relation with SC, IFC — Complaints reporting that there being large crowd at site not possible for them to recognize members — Investigation finding detentions a membership — Detention carried out by law and — Not explanation of reasons for the non-prosecution — Detention not justified

(Para 9)

(C) National Security Act 144 of 1960, § 3 — Detention — Incident alleged to have been taken place on 27-3-64 — Whole matter of detention proved on 28-3-65 — Detention invalid

ALB 82/ACT/186 AA3/249

— A detention order on a ground which is old and stale is not permissible under the law. (Para 10)

(D) National Security Act 144 of 1960, § 3(2) — Detention — Continued detention — Alleged of detentions subsequent to judicial trial on same facts which formed basis of detentions — Alleged that no crime technical ground — Continued detention of detentions unreasonable

It is an often repeated that prolonged detentions violate the principle of a detentions being lawful under the principle of a detentions in for other like reasons, it is open to the District Magistrate, in relation himself regarding the necessity of detention of the detentions. But a time the detentions is alleged subsequent to the judicial trial on the same facts which formed the basis of detentions the continued detention of the detentions would be unreasonable: as such a detention on a ground as being a detentions would be not correct. Specifically where the detentions motions failed to show that the detentions was acquired was on some technical ground which did not require the necessity of the first detentions report on the basis of which the detentions was detained. ALB 1980 SC 127. Rat. on. (Para 11)

Case	Referral	Chambers	Form
ALB 1981 SC 18	1981 Co LJ 107	1	
1981 AL LJ 111 (1981)		1	
ALB 1980 SC 127	1980 Co LJ 177	12	

Yong, Kumar Sharma, for Plaintiff Standing Counsel, for Respondents

R. V. SENGLE, J. — By means of the process under Art 23 of the Constitution the prisoner has challenged validity of his detentions made under the order of the District Magistrate. Aggs. ch. 142 1981 under order § 3(2) of the National Security Act.

3. The District Magistrate was satisfied that the prisoner's detentions was necessary with a view to preventing him from subverting public order and perpetrating maintenance subversive order. In response of his powers under § 3(2) of the National Security Act he issued an order on 24-3-1981 detaining the prisoner's arrest and detention. The prisoner made a representation to the State Government. On the recommendation of the Advisory Board

the State Government rejected the petitioner's representation. The petitioner was arrested on 14.3.1987 and since then he is undergoing imprisonment.

3. The grounds of detention against the petitioner are summarized as follows: (i) of the fact stated that the District Magistrate passed the detention order on three grounds in the first ground it is mentioned that Randeep Kapoor, owner of Bank Victoria Apartments and a letter by post on 34.3.1986, stating that to reach Ram Das Gupta on 2<sup>nd</sup> 4<sup>th</sup> floor along with him a sum of Rs. 48,000/- between 12 and 12.15 hours. The letter contained a threat that if he disclosed the fact to others, his entire family will be wiped off. The Kapoor met the Senior Superintendent of Police who conveyed information to place charges to appear against Kapoor to the Ram Das Gupta at the appointed place. Thus the petitioner approached to Dr. Kapoor and dominated the scene. Whereupon, the police officers were there in plain clothes caught hold of the petitioner. A first information report was lodged at the police station by Dr. Randeep Kapoor against the petitioner as a result of which Crime No. 264 under 120<sup>a</sup>, 265, 266, I.P.C. was registered against the petitioner at Police Station Meerapuri on 27.3.1986.

4. In the second ground it is mentioned that on 1.11.1986 Anwar Joon Singh and P. N. Dandekar, Manager Punjab National Bank, went together to Shah Market on about 11.30 A.M. for making a telephone call. Since there was no telephone, they went towards Civil Lines to communicate with their bank, was open. Meanwhile this was attacked by a gang of about twenty armed persons in Anwar Joon Singh. A report of the incident was lodged at P. S. Meerapuri at Crime No. 304 under 302<sup>a</sup>, I.P.C. on 1.11.1986. During investigation of the case the petitioner's involvement in the matter was found and he was arrested on 1<sup>st</sup> 11.1986 in connection with the incident.

5. The third ground states that Ram Das Gupta, an employee of the office of Director of Agriculture, Meerapuri lodged a first information report at Police Station Harpurda Agrha on 1.11.1986 against the petitioner and his associates under Ss. 286-29<sup>a</sup> I.P.C. According to the first information report, Ram Das Gupta, along with Randeep Singh

and associates took their own vehicle to the office of the respondent of the Agrha office from the Bank Road of India (a party of P. N. Dandekar). When they reached the office it was observed that there were about 15-20 persons of his associates tried to disturb the law concerning the money from the Punjab Bank and that were members one of the associates of the petitioner (about 10-12) tried to persuade W. N. Randeep Singh to let him occupy the office use of the petitioner's assistant. Heed at him which caused injury to his stomach. Thereafter the petitioner and his associates were successful in disrupting with the sum of Rs. 10,000/-). On account of this incident, there was chaos in the Agrha City.

6. The order of the District Magistrate further states that the petitioner was arrested on 1.11.1986 and hence is put custody on 11.1.1987 and application was made on behalf of the petitioner and there was every possibility of his being released on bail. Since the District Magistrate was satisfied that the petitioner's arrest as mentioned in the first ground disturbed public order the petitioner's detention was necessary to provide law, law, including non-peace activities prejudicial to maintenance of public order.

7. Learned counsel for the petitioner urged that none of the three grounds on which the petitioner has been detained relate to public order. He stated that all relate to maintenance of law and order. The scope and implication of public order and the circumstances in which public order is likely to be affected has been considered in a Full Bench of the Court in *Habibullah Khan v. State of U.P.* (AIR 1984 Allahabad Dist. 7, 8) of 1984) dated on 1.8.1984 (reporter 1984-2 AIR 1222). The Full Bench held that public order primarily means peace and tranquillity of the community at large. It is an expression of wide connotation which signifies that the state of tranquillity prevails amongst the members of the society. Any act which affects the peace and tranquillity of the community at large, affects the public order. The activities prejudicial to maintenance of public order comprises an activity which disturbs the peace and the tranquillity in general. Breach of law and order itself does not, but over, disturbs does not affect public order. If the removal of a person has no persuasive to affect public peace and tranquillity, the same would not relate to public

order means they would fall within the purview of law and order. Even if an activity amounts to serious harassment like harassment duty or robbery, but it does not create some panic or it does not affect the common public life of the community, the offence is discrete. Its nature is reprehensible cannot be said to affect public order. Life, convenience of an offence only individuals are affected and public at large is not affected the crime or the offence even though stress would only relieve law and order. The fact that it is not a disorder, disturbance of law leading to disorder is not sufficient to invoke the extraordinary powers under the National Security Act unless the act is quantum endangered or was likely to endanger public order. Thus law is not the limit but the potentiality of the act is question.

8. In *Ajay Datta* (supra) (1977) 1 Cr. 191 (SC) it was held that disturbance made on certain individuals a public place or being at the police and emergency member at the market was not sufficient to invade the power under S. 20 of the Act to detain a person as the incidents were not related to public order meant they related to maintenance of law and order.

9. In the light of the aforesaid principles, the grounds I examined in detail, would show that the nature of the grounds alleged against the petitioner are related to maintenance of law and order. They have no nexus with public order. The last provisions are measures of control from a cinema owner in a certain manner. There is nothing no more to show that the petitioner has been receiving money from the members of the public in an indiscriminate manner. The alleged incident as contained in ground No. 1 affected only a single individual Kallappa Kappoo with whom the petitioner was not on good terms. The second ground relates to an offence of attempting to commit murder of Amar Jyoti Singh. This ground also by its nature was not likely to affect public order. The third ground relates to robbery alleged to have been committed by the petitioner and his associates in snatching the salary of Government employees. The alleged crime is a serious one, although reprehensible in nature, but by its nature it is not likely to affect the general peace and tranquillity or public order. No

death threats and gross may have been caused only because on account of the incident law that is, well is not sufficient to have the petitioner to affect the even tempo of the life of the community. In our opinion, therefore, none of the three grounds relate to public order. None each of them relates to maintenance of law and order.

10. Limited account for the petitioner made some additional submissions in reading the nature of the petitioner's conduct described. We would like to consider those submissions. It was submitted that the facts stated in ground No. 1 are not true. We find considerably more in the submission. Ground No. 1 relates to an incident which took place on 27-1-1984 while the order of detention was passed on 24-1-1984. The timing between the alleged incident and the passing of the detention order is almost a year. It is not well or bad that a detention order or a ground affecting old and that it is not permissible under the law. The incident alleged to have taken place on 27th Mar. 1984 has no close proximity with the purpose and object of the detention order which was passed almost after a year.

11. As regards the second ground, it was submitted that since No. 104 was registered as the police station under S. 201 I.P.C. on 1-11-1984 on the basis of a written first information report submitted by Amar Jyoti Singh. On a perusal of the report of Amar Jyoti Singh (Annexure VI to the petition) it is apparent that neither Amar Jyoti Singh nor P. N. Induram could recognise the individuals, in his report Amar Jyoti Singh further stated that there was a fight and that it was not possible for them to recognise the individuals, but for that reason he further stated that he was not interested in taking any action against anybody. On the face of the statement made by Amar Jyoti Singh himself in the report on the basis of which crime No. 104 was registered at the Police Station, the petitioner could not be held responsible for the incident. In the ground, it is stated that during investigation the petitioner's involvement was found, but it is submitted that thereafter after investigation the petitioner was set free up for trial, the respondents have not explained reasons for compromising the petitioner.

12. As regards the third ground related

up statements of witnesses by the petitioner, whereas the petitioner was preoccupied in the confusion for the officers. On the completion of the said the learned Judge (Senior Additional Judge) by his order, B-10-1155 accepted the petition of the shajgo under S. 30, I.P.C. on support of the allegations contained in the third ground. A copy of the judgment has been filed in the petition along with a supplementary affidavit. On a perusal of the same it is found that the learned Judge merely accepted the averments of the case by the police and observed that the investigation was done fairly, involving no unfairness. The petitioner was acquitted accordingly. The effect of the order of acquittal is that the petitioner was not involved in the matter as alleged in the third ground. The frame of detection as contained in that ground therefore becomes irrelevant. In *Shri Bada Datta v. La. Governor, Patna, AIR 1983 SC 1217* (supra) held that if the ground of detection raised is an instance of criminal prosecution against the detenu and the detenu was acquitted in the prosecution, the order of acquittal would be a final and finalisation the matter contained in that ground could not be ground to raise any consideration for detaining the petitioner under S. 33 of the Act. It is true that in the instant case the order of acquittal was not in respect of the detenu, the District Magistrate issued the direction under it would therefore follow that even if the District District Magistrate detained the petitioner on the basis of the impugned report contained in ground No. 3, the order may have been valid but after the judicial pronouncement and acquittal of the petitioner, the ground issued to be valid for the continuance of the petitioner's detention on this ground. We are conscious that even after acquittal on the ground of benefit of doubt or on the ground of evidence wrong drawn under the pressure of a detenu or for other like reasons, it is open to the District Magistrate to search himself regarding the necessity of detention of the detenu. The order of the detenu is accepted subsequent to the judicial finding on the same facts which formed a basis of detention, the continued detention of the detenu would be unreasonable as much as detenu on a ground involving a detenu would be unreasonable. The detaining authority has failed to show that the petitioner's acquittal

was not judicial ground which does not question the validity of the first information report on the basis of which the petitioner was detained.

**11.** In view of the above discussion we are of the opinion that the petitioner's submission under S. 33 is not sustainable on any of the three grounds.

**12.** Accordingly allow the petitioner to dismiss the respondents to return the petition for withdrawal or to return to the petitioner in some other case.

Prayer allowed.

1983 ALL. L.J. 428

S. 33, MISA, I.

**Sabb-Lal v. Dy. Director of Consolidation, Patna** and others. Opposite Petitioner.

Civil Misc. Writ Petn. No. 7340 of 1982 Dt. 24/1/1983.

**13.** *S.P. Consolidation of Holdings Act (1 of 1956), Ss. 44-A, 7 A. — Claim for detenu in disputed holding — Objection under S. 44-A — Filing of — Forum — It should be an authority superior to District Consolidation Officer and not any other authority exercising appellate or revisional jurisdiction under the Act.*

It is well understood that any person can file objection under S. 7 A in Consolidation, sale and transfer or share in respect of any holding recorded in the last year Khata in the name of other owner/holder. The objection could be presented before the District Consolidation Officer. The Consolidation Officer could also remove the objection in new title procedure conducted under S. 44A which provides that where property are to be transferred or dealt to be performed by any authority under the Act or the rules framed thereunder, such property or deals may also be removed or performed by an authority superior to it. The words an authority superior to it in S. 44A can very well be construed to give jurisdiction only to an authority superior to the Assistant

ADDITIONAL JUDGE

Consolidation Officer named the Consolidation Officer (consolidation) as per No. 402/5-3-A without any correspondence, summons appearing or no-summons appearing under the Act namely, the Settlement Officer Consolidation or the Deputy Director of Consolidation.

(Para 2)

When a consolidation proceedings is started along with the plot even in the disputed holdings, before the Settlement Officer Consolidation it would not be maintainable. Nor he could make reference for concluding the delay in filing the objection and on deciding the objection as merits.

(Para 3)

(B) L.P. Consolidation of Holdings, Act of 1946, S. 3-A — Procedure in objection — Inquiry — Statement recorded by any officer therein — Cannot be taken to be having statement on paper in a judicial proceeding unless the officer proceeds to record the statement of witnesses in presence of the parties after allowing them the opportunity of cross-examining witnesses.

(Para 3b)

(C) L.P. Consolidation of Holdings, Act of 1946, S. 4(2) — Order under — Validity — Deputy Director accepting report of Settlement Officer and passing final order making part of the order — No objection can be taken to the order — When Deputy Director generally has agreed with the report, contents of report were not required to be repeated by him in his order.

(Para 7)

Sukh Lal, for Petitioner, Standing Counsel for Opposite Parties

**ORDER** — Briefly stated, the facts of the present case are as follows:—

Sometime in the year 1950 one Shree Lal son of one late Sukh Singh (Nos. 427/3, 427/3-447, 444 and '67' present in village Sarhan Khurd, district Patiala) on his own claim Sarhan Khurd was made awarded as allotted plots on the basis of map No. 349-L-1 and he had died in the year 1931. The petitioner says that he had left a widow named San, daughter who resides in her father's place, Hariharnagar. The petitioner further claimed that once late Chharsingh had given him land back to Shree Lal as he was a poor and disabled person, and as such, after death of

Shree Lal the allotted plot, which he had acquired on basis from Gurm Sarhan had divided on basis of the real location. The names of the persons were accordingly entered in the year 1971 on the said plot. The village Sarhan Khurd was brought under consolidation operations under 1972 and awards were made under Khanna the names of the persons were recorded by agent holders over the allotted plot 'No. 427' and it has been entered in the year previous that Shree Lal, Shree Raj, Shree Lal son of Mangal, Chharsingh, Sukh Lal, Ram Dhillon and Chharsingh had the allotment under Section 3-A of the L.P. Consolidation of Holdings, Act 1946 after the facts against the petitioner claiming that they held a possession over plot 'No. 427' and they have also acquired certain rights in adverse possession. No objection was submitted by any other persons or by the Gurm Sarhan in respect of other allotted remaining plots. The objection was rejected by the Consolidation Officer rule order dated 19.1.1973 on the basis of compromise filed by Shree Lal and others in which they admitted the title and possession of the petitioner over the said plot 'No. 427' about which they had filed objections. The petitioner was also allowed claim in respect of the other allotted land in dispute and they claimed to be in possession over the same.

2. It has also been stated in the writ petition that besides the allotted plots No. 427/3 also the petitioner has 18,000 hectares of the land recorded in Chharsingh in the year 1946 Chharsingh under Khanna Nos. 381, 214 and 42, 50, 182, 186, 184 and 189 which is village Sarhan Khurd. In respect of these land holdings petitioner were also allowed claim and they claimed to be in exclusive possession as sole tenant holder thereof. No objection was filed by any person in respect of said land which is the map under Sec. 3-A or of the map under Section 31 of the Act.

3. It appears that a registration was made by opposite parties Nos. 3 to 24 before the Settlement Officer Consolidation stating the plots Nos. 427/3, 427/3-444 and 367 which were let out by the Gurm Sarhan to Shree Lal son of Ram Dhillon, have awarded to Gurm Sarhan after death of Shree Lal as he had died intestate. These plots were wrongly got



Shree Lal had also, as per the statement by the Settlement Officer, Consolidation, that he was made to put his thumb impressions on a copy of the Deed of Sale, Section 111 of the Consolidation Act had also been obtained and had been submitted with the original copy of the Deed. With all the above evidence, Learned counsel also argued that whatever statement has been recorded by the Settlement Officer, Consolidation while making enquiry as to the date and submitting relevant report cannot be taken as to a valid piece of evidence as it is the same could be false or untrue. Learned counsel had also argued that the original Deed placed in the Deed Book No. 423 Consolidation does not contain any term, term speaking, order and the name, the name stated because the relevant report is still not from any of his order which might be placed on Consolidation in the form recorded by the Settlement Officer, Consolidation.

6. In reply, learned counsel for the Case Sahib argued that in accordance with the provision of Section 111 C of the Act if it is found that the tenant holder found useless and the land had vested in the Case Sahib, the same would be deemed to be recorded in the name of the Case Sahib. Learned counsel pointed out that in the present case Shree Lal son of Shree was the tenant holder as the name of name printed by the Case Sahib. The pronouncement had given name entered on the land belonging to Shree Lal son of Shree who had died nameless. Learned counsel pointed out that the pronouncement merely mentioned that Shree Lal was also named as Ram Lal and that he was his son together and that he had left a widow named Shree Channappa who residing with his father. Learned counsel also argued that in these circumstances the Settlement Officer, Consolidation had rightly proceeded to make enquiry in the matter and recorded the statement of Shree Channappa who had deposed that she is widow of Ram Lal who was one of Shree Sahib and that she is the widow of Shree Lal son of Shree. She had further deposed that her husband Ram Lal was not named as Shree Lal. In these circumstances, a prima facie case was made out for consolidation and the Settlement Officer, Consolidation had rightly directed that the order dated 19-1-1973 which was passed by the Consolidation Officer on the basis of enquiry made between the pronouncement and the claimant in respect of plot

No. 423 Consolidation be set aside on the basis of the report of plot belonging to Shree Lal son of Shree directed to be consolidated name. Learned counsel also argued that the name which have been entered in the relevant report are not the actual name and the Settlement Officer, Consolidation has rightly made a reference to the Deputy Director of Consolidation, Bangalore and could not put a name other previous under the Act which could enable the Settlement Officer, Consolidation to convert the objection dated 19-1-1973 filed by Shree Channappa under Section 9 A of the Act excepting Section 9B which provides that where pronouncement is not contained or does not be performed by an authority under this Act or the Rules framed thereunder, such pronouncement may also be corrected or perfected by a superior or superior. Learned counsel also contended that in case of Section 9B of the Settlement Officer, Consolidation could convert the objection filed by Shree Channappa under Section 9 A of the Act and the learned Deputy Director of Consolidation has not come in accepting the report in respect of the objection filed by Shree Channappa pertaining to the land of Shree No. 203 not entered in the name. I have carefully considered the arguments of the learned counsel for the parties.

7. Before the last which was recorded in the name of Shree Lal son of Shree namely plot No. 423-1 was concerned the crucial question involved in respect of the land belonging to Shree Lal son of Shree was the real holder of the pronouncement or not and also whether Shree Channappa was the widow of Shree Lal son of Shree or not. The Settlement Officer, Consolidation has mentioned relevant facts in the statement in respect of Shree Lal son of Shree and the confirmation of the pronouncement the land which was issued was by the Case Sahib could not direct in the land and the relevant records directed to be corrected in respect thereof. In the view of the court I do not find any error has been committed by the Deputy Director of Consolidation in accepting the relevant report of the report which was submitted which was recorded earlier in the name of Shree Lal son of Shree namely plots Nos. 423/2, 423/3, 443-44 and 447 and also in making made the order dated 19-1-1973 passed by the Consolidation Officer which was in respect of plot No. 423 actually recorded in

Chairman of the Consolidation Board on the basis of issue passed by the Consolidation Board. The learned Deputy Director of Consolidation has accepted the report of the Settlement Officer Consolidation and it has been made a part of the order. No objection can be taken to this order because when generally he has agreed with the report of the Settlement Officer Consolidation, the contents of the report will not required to be repeated by the Deputy Director of Consolidation in order. It would suffice that Deputy Director of Consolidation has accepted the report and done with reference part of the order. In this case, if the matter before me had any merit in the contention of the learned counsel for the petitioner who had challenged the order passed by the Deputy Director of Consolidation on the ground that the report passed by the Settlement Officer Consolidation could not be made a part of the final order passed under S. 20-A of the Act by the Dy. Director of Consolidation.

4. In the order of the learned report, issuing in-land of Khata No 205 and as concerned, I find that the same cannot be repeated and detained to be quoted. It is well noted that any person can file objection under S. 19-A or claim rights, or final award or claim in respect of any holding recorded in the land year Khata in the name of other person under. The objection could be presented before the Assistant Consolidation Officer. The Consolidation Officer could also discuss the objection in turn of the person concerned under S. 20-A which provides that when person are to be removed or added to be performed by any authority under the Act or the rules framed thereunder such person or persons may also be removed or permitted by an authority superior to. The words an authority superior to S. 19-A, may well be construed to give jurisdiction only to an authority superior to the Assistant Consolidation Officer namely, the Consolidation Officer or someone as superior than under S. 19-A of the Act and he to use other appropriate authority removing objection or removal permission under the Act namely the Settlement Officer Consolidation or the Deputy Director of Consolidation. If the contents of the objection would have been to transfer permission or any superior authority to district power or to perform under the Act, the words should have been "such person can be removed or

added to be performed by any authority superior to it" or it can typellies in or group authority superior to it. In this case of the matter the Settlement Officer Consolidation could not entertain the objection dated 14-11-1970 filed by Sett. Officer's claiming I had done along with the permission of the holding Khata No 205 and he could make reference for considering the delay in filing the objection and for deciding the objection on merits. The relevant report as accepted of Khata No 205, has also been accepted by the Deputy Director of Consolidation which desired to be quoted for the reasons stated above instead of being accepted by the Deputy Director of Consolidation. Sett. Officer's could present his objection dated 14-11-1970 before the Assistant Consolidation Officer or before the Consolidation Officer along with an application seeking consideration of delay. My response was therefore slightly misinterpreted by the Settlement Officer Consolidation and a despatch to be returned back to him for presenting before the Assistant Consolidation Officer or the Consolidation Officer. If the duty to file if such objection, would be presented by Sett. Officer's, the person would get an opportunity of speaking and I would be open to the Consolidation Officer to decide whether delay in filing the objection be considered or not after giving opportunity of hearing to the person on that point. If he finds that the delay does not to be considered, then after giving appropriate order as regard to consideration of delay, he would proceed to decide the case framing the necessary award which may arise on the findings of the person in respect of the land of relevant holding Khata No 205-12. The relevant report is well noted, order passed by the Deputy Director of Consolidation in respect of the objection dated 14-11-1970 cannot be sustained and deserves to be quoted.

5. Learned counsel had previously conceded that relevant evidence has been recorded by the Settlement Officer Consolidation while making report in the matter relating to the land a holding recorded in the name of Sett. Lat and son of Sett. or in respect of Khata No 205 and the same cannot be taken to be a piece of evidence against the petitioner in the present proceedings. Learned counsel had contended that the statement of









March 4, 1960. Along with the appeal and the reference, indeed Ali also filed an application for production of the files. The District Judge by an order dated May 1957 confirmed the duty in moving the appeal as well as the reference and required both the appeal and the reference. It is also understood 20-1 1957 which has been challenged in the present petition. The learned counsel for the petitioner has contended both that the District Judge wrongly confirmed the duty in filing the appeal and the reference. The learned respondent of the learned counsel is that it was not so (please see) against the order issued by the Collector and the reference is wholly without production of the proceedings in the reference is upheld in two conclusions paragraphs against the term order are liable to create confusion and harassment to the petitioner.

4 In my opinion so far as the first paragraph is concerned, it has no substance. The District Judge after considering the facts for the second case to the conclusion that full-scale case has been made out for production of duty in filing appeal and the reference. This is clearly a finding of fact and as such, no interference is called for under Art 226 of the Constitution of India in this regard.

5 In regard to the second contention raised by the learned counsel, in my opinion the contention is well founded. Substantially the property in dispute is a part of larger property which has been entered as property of the state in the register of weight S. 17 & all the Act clearly provides that if the Board is satisfied after making an enquiry that any person is in unauthorized possession of any immovable property, entered as property of weight respondent a request to the Collector under which production the property is made to obtain and deliver the possession of the property is a

6. Sub-clause (2) of S. 34 further provides the powers of sub-sections (1), (2) & (3) (4) and (5) of S. 34 shall continue to apply in relation to a stipulation under sub-section (1) as the property is otherwise a request under sub-section (1) of that section. In view of the provision, the provisions of S. 46-A sub-clause (2) or sub-clause (3) would clearly apply after the receipt of a request of a Board, the

Collector has to pass an order directing the person in possession to deliver the property to the Board. The said order S. 46-B of the Act is as follows:—

Any person aggrieved by an order of the Collector under sub-section (2) may, within a period of thirty days from the date of the receipt of the order, prefer an appeal to the Court of the District Judge, within whose jurisdiction the property is situate.

7 In view of the provision after the Collector passes an order to deliver the property to a revenue and possession of the property, he has a right to file an appeal before the District Judge.

8 In *Magan Singh Mann v. Govt. of India* A.I.R. 1967 A.I.J. 847 it has been observed to interpret various sections of U.P. Madan Singh June 1960. On an analysis to various provisions I had clearly recorded my opinion that in a case where a dispute is in regard to unauthorized possession of a property at a road situated in the register of weight due the aggrieved person had a right of appeal.

9 Section 34 has been considered by me in the case of *Magan Singh Mann* and it has been held by me that S. 31 only applies in a case where the property has not been entered in a register of weight. The principle laid down in this case fully applies to the present case.

10 Since the property has been entered in the register of weight only, namely, under A.I. has to file an appeal under S. 46-B sub-clause (2) of the Act. He has no right to file a reference to a tribunal under S. 33 of the Act. In the circumstances, no reference can be made to the tribunal and the main proceedings is reference are wholly without production.

11 The petition is accordingly allowed. The order of the District Judge dated 20-1-1957 is modified so far as it relates to the appeal which involved in the case has been full-scale case that the proceedings are represented by the learned Ali shall be quashed. The appeal is filed by the learned Ali shall be decided in accordance with law as expeditiously as possible upon the merits as pending for a sufficiently long time. The petition stands as leave three case costs.

For and partly allowed

## 1986 A.B.L. 2 427

V. P. MATHIAS, J.

State Applicant v. Larson-Saugh and others.  
Opposite Parties

Reference Nos. 2 to 4 of 1984 Ex. 15-2,  
1985

**E. P. Decree Affirmed Arise Act** [3 of 1983, S. 7(1) Proviso — **Applicability** — **Case made by Special Court pending before Sessions Court when Act came into operation** — **Transfer of case to Special Court (Anti-Decree) after commencement of Act** — **There being no conflict in provisions of S. 7(1) proviso, transfer was proper** (Para 3.4)

Addl. Dist. Advocate for Applicant & 3  
Vs. 5 P. Inspectors and Rajendra Saugh  
for Opposite Parties

**ORDER** — There are three references made by S. P. P. Mathias, the Dist. Special Judge, Decree Affirmed Arise, Dist. by his summonses of July 2, 1984

1. The brief facts of the matter are that three cases, namely S. T. No. 394 of 1981 State Versus Larson Saugh, S. T. No. 460 of 1981 State Versus Rajendra Saugh, and S. T. No. 460 of 1982 State Versus Saugh were pending disposal in the district of Daulta. The prosecution may say that Sanku Chandra was in the night between 17th and 18th Nov. 1980 at about 11.30 p.m. abetted from his government at village Damsay, Police Station Fargala, district Daulta, by the seven accused of these three cases, who were also accompanied by one Mahesh and 6 and 7 others. In addition to committing the offence of abduction under S. 364 I.P.C. three persons also committed the offence of robbery punishable under S. 395 I.P.C. Some of these accused are also said to have committed the offence of mutual conspiracy under S. 108 I.P.C. in respect of the offence under S. 364 and 361 I.P.C. In all, then, there were 12 accused, out of whom one, namely Raju Ram das, these 17 persons in the night between 17th and 18th Nov. 1980 at about 4.00 p.m. abetted the member of Sanku Chandra in the field of Ben Saugh in village Magla Ben, police station Aligga, district Daulta, and forced the body in the field and then offences under Ss. 147, 148, 302, 149

and 361 I.P.C. were also committed. The dead body was afterwards recovered at on 12-5-1981 at the instance of one Ram Prakash Choudhary in these Sessions Court was, submitted on 6-6-1981, 1-10-1981 and 1-10-1981 and charges were framed. The cases were pending before the said Sessions Judge at Daulta when S. P. Decree Affirmed Arise Act, 1983-84, P. Act No. 38 of 1983 came into operation and accepted the action of the President. Then the Sessions Judge transferred these cases in view of the proviso to S. 7(1) of the Act and S-8866 to the Court of the Special Judge, Anti-Decree, Daulta, which was removed there on 24-5-1984.

2. The learned Judge appears to be of the view that these cases could not have been transferred to the Court of the Special Judge, Daulta, as the proviso applied to S. 7(1) of the Act will become nugatory, and meaningless and it shall lay down that all cases stated by a Special Court under the Act, pending before any Court immediately before the date of the commencement of the Act, in a decree affirmed arise, shall need transferred to the Special Court having jurisdiction over such cases and shall be dealt with and disposed of in accordance with the provisions of the Act.

3. In the first instance of this proviso the words under the Act, qualify the term Special Court. It is because the Special Court, having jurisdiction was being under S. 8 of the I.P.A. No. 31 of 1982. The proviso therefore clearly means that if there is a case already pending in the district which is triable by a Special Court and the case is pending there before the commencement of the Act, and is pending in a decree affirmed arise, it has to stand transferred to the Special Court having jurisdiction and it has to be dealt with and disposed of by that Court in accordance with the provisions of the Act. There is no ambiguity in this provision of law. The reference therefore is of no substance. The transfer shall be in accordance with law and in accordance with law.

4. The above information is received. The Court below shall proceed with the disposal of the three cases respectively through each of the cases has been set due to these proceedings.

Reference referred accordingly.

## FIRMAIL L.J. 129

[J. N. SETHI, Jyly C.J. AIR  
AMALINDRA NATH VERMA, J.]

Derek Kanner, Professor v. Principal, M.S. N. Medical College, Aligarh and another Respondents

Civil Misc. Writ Petn. No. 1961 of 1965  
D. 19-11-1965

[A.] **Constitution of India, Art. 226 — Extension — Post Graduate Medical Course — Prohibition for preventing simultaneously two courses of studies in different medical colleges — Does not apply where student is prevented from pursuing studies in one of the Colleges.**

Where a student disqualifies on paper as precluded from pursuing studies in another medical college whether by certificate obtained or by internal limit and as a consequence thereof he gives up his education in the other Medical College unoppositely as well as being to apply the rule prohibiting a student from pursuing simultaneously two courses of studies in different medical colleges.

(Pursued by)

[B.] **S. P. Sanyal University Act/President's Act 19 of 1954, S. 43(4) — Termination of studentship of student — Subst. (4) is not a condition of studentship in this respect.**

Subst. (4) of S. 43 which provides that a student may be removed from studentship work or conduct in accordance with the provisions of the Ordinances is no condition of the continuation and continuance of such studentship of another student. The termination of a student can also come to an end by, circumstances which entail that a student drops voluntarily or by some event or accident or otherwise that he does not desire to pursue his studies. There is no express bar in the Act or otherwise that students voluntarily giving up his studentship & student may by his conduct indicate that he does not desire to pursue his studies or any university or an institution or college provided by the Act by giving into his university or college or taking up an engagement which may indicate the possibility of his pursuing the studies. The termination of studentship of studentship may

be called out from various facts and circumstances. (Pursued by)

Cases Related	Chronological Form	
AIR 1965 SC 2039		2
AIR 1964 SC 1520		2
AIR 1964 NOC 119	PRO UPLRSC 118	2
1961 AIR L.J. 129	1962 UPLRSC 46	2

A. N. Sanyal for Professor Sanyal Counsel for Respondents

**AMALINDRA NATH VERMA, J.** — The petition is directed against an order dated Aug. 13, 1965 passed by the Principal of the M.S. N. Medical College, Aligarh expelling the petitioner from the postgraduate course in Orthopaedics.

2. These are the relevant facts. The petitioner did his M.B.B.S. Course from the Aligarh Medical College in 1962 & his long internship at Joint Hindu Aid in Orthopaedics in July 1963. He was a superior for admission in the M.S. Course in the specialty of Orthopaedics against 75<sup>th</sup> seats which were under the then President rule as he failed up on the basis of vocational preference. However, in the case of Dr. Pradya Jain and others reported in AIR 1964 SC 1402 their Lordships noted that vocational preference in Post Graduate Course of study should not exceed 50%. The doctor offered the students of admission of the petitioner and four others who approached the Separate Court by way of a petition which was finally disposed of by a judgment and order dated May 1, 1964. (Reported in AIR 1965 SC 1039) which by that time Government was desirous to admit the petitioner and the four others in the M.S. Course at their respective specialties in the respective colleges for the academic session 1965. In taking which is any of the five other medical colleges. Pursuant to the difference, Medical Education and Training, Lucknow passed an order admitting the petitioner to the M.S. Course in Orthopaedics at the M. S. N. Medical College, Goranpore in compliance with the order a letter of Appointment was issued by the Principal of the M.S. Medical College, Goranpore on July 12, 1965. However, when the petitioner went to the Department of Orthopaedics with the letter of appointment, a group of hostile students led by the President of the Junior Doctors Association of the M.S. Medical

College faculty took him to the officers' house and allegedly handcuffed him and drove away. His belongings (including the money which he was carrying with him) were left in the station house at the Gorakhpur Medical College in the station and should give up the idea of pursuing education there. The petitioner was released only on a bond in the Gorakhpur city. On July 22, 1962 again when the prisoner went to deposit the bond and join the department in similar manner was subjected to a show. He was again dragged to the officers' house and was accompanied by the teachers of the institution of the said medical college. He was forcibly bound as a prisoner. Allahabad and that the prisoner returned to Allahabad. Hoping that hospital staff have looked down during a week or so since the unpleasant episode faced by the prisoner he, returned to Gorakhpur again on Aug. 2, 1962 and managed to deposit his bond on that date. On Aug. 3, 1962 when he went to the Orthopaedic Department he was again taken to the officers' house by force and was severely abused and beaten and was confined in the hospital till P.M. without any food or water. The prisoner was brought to the Gorakhpur Railway Station and was forcibly boarded in a train bound for Allahabad. By virtue of a letter dated Aug. 3, 1962 the prisoner brought about facts to the notice of the Head of the Department of Orthopaedics, the Director of Medical Education and the Senior Superintendent of Police and the then Magistrate of Gorakhpur town square. The letter was unfixed and no provision was offered to him "or any statement given that the prisoner would be permitted to pursue his studies in Gorakhpur."

5. In view of the facts mentioned above the petitioner states, in whose two letters on Aug. 6, 1962 sent to the Principal, Mohai Medical College and the other to the Principal, B.S. Medical College, Gorakhpur (copy of the correspondence of letters dated Aug. 6, 1962) he stated to inform that he had no option because of the pain and danger to his life in Gorakhpur but to discontinue his studies in the M. S. Orthopaedic Course at Gorakhpur. He states his letter "I therefore give up my studies at M. S. Orthopaedics and B.S. Medical College, Gorakhpur". He also said in this letter that he had requested the Principal M. L. S. (B.S.) Medical College,

Allahabad not to send his records to the B. S. D. Medical College, Gorakhpur. To the said officers another letter was sent in the Principal M. L. S. Medical College, Allahabad on Aug. 14, 1962 in response to which the Principal of the M. L. S. Medical College, passed the unopposed order, the order and portion of a book is quoted hereunder:—

"As regards your complaint as Diploma student at M. L. S. Medical College, Allahabad, you state satisfactorily, by a reading of two different correspondence at the distance of 300 miles, whereas you, was having your course in the Medical College, Gorakhpur, you have, stated to be a Diploma student of the medical College."

6. In the counter affidavit in the said order by the respondent Medical college it had then, in a counter-statement regarding admission to the respondent Medical College according to which a medical student who temporarily leaves studies in one place and returns to study in another University, and joins another University, is automatically allowed to be student of the former. As regards the difficulties confronting the prisoner at Gorakhpur Medical College and his inability to continue his studies it had on behalf of the respondent Medical College it that the respondent is not really concerned with that and that the prisoner should approach the State Government and the district officials of Gorakhpur for necessary relief. There is, however, no threat of the tort and violence faced by the prisoner who is compelled him to give up his studies in the Gorakhpur Medical College.

7. In the respondent's letter apart from narrating the treatment and statements issued in the hospital patient, the petitioner also stated that he had not successfully given up his studies in the Allahabad Medical College because when he was in the M. S. Course at Gorakhpur, he had some debts which he would be able to pay on his return to Gorakhpur and consequently he had taken leave from the Orthopaedics Department, Allahabad and was formally on furlough leave during the said period i.e. till he returned from Gorakhpur and resumed his studies in Allahabad before the unopposed order was passed. To support the prisoner has filed evidence of the attendance register which gives particulars to support the statement.

4. For the purposes of the test mentioned, respondent could not claim that respondent did not participate in the petitioning with respondent. It is a private fact of a very valuable right of person coming from respondent to the Diploma Council in which to have been fully informed without attending has not opportunity to have been fully informed in order to correct petition against him. Having been placed in great jeopardy of principles of natural justice the respondent is entitled to be questioned upon agent from the fact that it is not a reasonable one to interest. The respondent submitted was that there is no such institution or otherwise where petition for an economic institution of knowledge by the most giving of a course of study by a student in such a Medical College. It was also submitted that the Commission which has been called in is the answer to the petition as a non-existent and an material answer has been furnished by the respondent in support of such an alleged institution. Additionally it was argued that the Commission cannot afford the necessary evidence to the petitioning institution in the Diploma Council in the Alabamab Medical College. The third submission was in support of the petition that the respondent did not participate in the petitioning with S. H. H. of the C. P. State Government Act.

5. The learned Standing Council appearing for the respondent, on the other hand, submitted that as one of the facts that the finding of the Graduate Council has to be considered is that it is a private institution the possibility of a candidate giving a course of study elsewhere. It must follow in a necessary country the rules that are in force in the petitioning institution for admission to the Medical College for admission to a student of the Diploma Council in Alabamab Medical College. The learned Standing Council however fully conceded that there is no specific rule in order of the Commission, primarily for an economic institution of knowledge of a candidate giving another Medical College.

6. Having heard learned counsel for the petition in some length and given due weight to a careful consideration we are clearly of the opinion that the case favours the petitioner's

submission as clearly unreasonable or law. Again from the fact that the respondent submitted the petitioning with a course of study and could not have been fully informed without having opportunity of being heard in the fact and circumstances is that the petitioning is not established finally legally, and therefore the standing of the petition in Alabamab Medical College in the Diploma Council did not cease.

7. It is also argued that there is no specific rule or order providing for the economic institution of knowledge by the most favour of a candidate giving another Medical College. Learned Standing Council very fully conceded that there is no such rule or order. The respondent also, however, stated clearly in the respondent's favour that the Graduate Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council. Learned counsel argued that the respondent did not participate in the petitioning concerning the nature of the petitioning for the Graduate Diploma Council. These regulations provide that the candidate giving the Graduate Diploma Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council. Learned counsel referred us to the two decisions of the Court reported in Dr. Robert Kerner v. President, M. L. N. Medical College, Alabamab 1981 U.P. 1880 (1981) 48 LJ 1244 and Dr. Robert Kerner v. President, M. L. N. Medical College, Alabamab 1981 U.P. 1880 (1981) 48 LJ 1244. It is worth of which the nature of the petitioning Graduate Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council. Learned counsel submitted that the petitioning Graduate Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council. The learned counsel submitted that the petitioning Graduate Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council.

8. The learned Standing Council in support of the petition in support of the nature of the petitioning Graduate Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council. The learned Standing Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council in support of the petitioning Graduate Council.



prisoner. It therefore, the prisoner had surrendered his student at Gorakhpur for would have had no right to continue his studentship in the Diploma Course in the Alahabad Medical College and the Principal would have been in duty to take appropriate action for terminating his studentship in a hospital. However, on the facts of the present case, it is apparent that the principal of the prisoner in the Gorakhpur Medical College has become official and indirect normandans may making, is remained a dual later with a leave paper submission. The prisoner was pleasantly permitted then joining his student in Gorakhpur. He was today, removed from the Department of Gorakhpur Medical College to the same level of the Medical College joining up again him and making it impossible for him to remain within the process of the Gorakhpur Medical College to say nothing about the prisoner's being official prisoner his student Gorakhpur. This was in spite from the suspension of the prisoner's admission. The prisoner completed both in the Head of the Department as well as in the former officials of Gorakhpur and sought their help and intervention but in vain. Thus, was leave him wonder that the prisoner by means of his former admission both in the Principal Alahabad Medical College as well as the Gorakhpur Medical College give up his studentship in Gorakhpur Medical College in its studentship terms. Faced with the problem, he took continued the prisoner to the could be a thought of processing his student at Gorakhpur without the risk and pain to his life. When, as time goes on through school of paper supervision in processing matter, in student medical college whether by themselves themselves or by external force and, as a consequence of this, by giving up his studentship in the other Medical College accordingly, it will be wrong to apply the rule prohibiting a student from processing simultaneously two courses of studies at different medical colleges. The Principal of the Alahabad Medical College was likewise unjustified in expelling the admission of the prisoner despite the facts and circumstances mentioned above having been brought to his notice.

12. We, however, do not agree with the learned magistrate the prisoner that I. 10/11

is the only prisoner in emergency in which the suspension of a student's admission. Subsequent to I. 10/11, it is clearly established that a student may be removed for unsatisfactory work, or conduct in accordance with the provisions of the Ordinances is not withdrawal of the student's admission and not appropriate for the withdrawal of a student's admission. In our opinion, the withdrawal of a student's admission cannot be considered as an administrative action, which implies that a student may, regardless of the conditions, not manifest an intention that he does not desire to pursue his studies. There is no dispute that in the I. P. State Commission, Act of 1946, as a student's withdrawal is given up his studentship. A student may, by his conduct, indicate that he does not desire to pursue his studies or, any, necessary or an intention of, college governed by the I. P. State Commission, but by giving up his studentship, or college of giving up his studentship which may indicate the possibility of his processing the student. The process of withdrawing a student's admission may be called out from various facts and circumstances.

13. In the present case, however, we find that apart from the fact that the prisoner was given, need from processing his student in the Gorakhpur Medical College, rendering the suspension these informal and irregularities, the fact that the prisoner, and accordingly, given up his studentship in the Alahabad Medical College in view of the fact that he had given up leave from the Gorakhpur, Department, Alahabad Medical College as evidenced by the material of the admission support issued to the prisoner without further processing in Gorakhpur. He had also requested the Principal of the Alahabad Medical College not to forward his papers in the Gorakhpur Medical College. All these facts point to the conclusion that the prisoner had not intended to give up his studentship in Alahabad and then follow his admission in the Gorakhpur Medical College could be considered as a matter for leave back and removed his student in Alahabad. Lastly, far from the contrary, namely, the temporary suspension of the prisoner from Alahabad had not been filled up as in to make the prisoner responsible for the prisoner.

14. To sum up, our conclusion is that on the facts of the present case, the withdrawal of the prisoner had not caused and the Principal of the Gorakhpur Medical College

was not justified in cancelling the prisoner's admission to the Diploma Course in Orthopedics.

14. In the prison, the prisoner actually and is allowed. This required order dated Aug. 13, 1955 (minutes IX) to the prisoner issued by the Principal of the independent Medical College is qualified. As a consequence, the prisoner shall be deemed to be continuing as a student of the Diploma Course in Orthopedics of the M. V. Medical College Alameda. There will be no order as is done.

15. While the judgment was being delivered the learned counsel for the respondent made an oral prayer regarding for a certificate under Art. 123 of the Constitution for the District to be considered, substantial question of law of general scope upon which needs to be decided by the Supreme Court. Having regard to the nature of the controversy involved in the case we are not inclined that the case involves any such question. The prayer for certificate is accordingly refused.

Prison allowed

## THE AIR, L. 1 402

### A BAREIL 1

Asstg. Atty. Gen., Prisoner v. VTE Adm. Div., Judge Kasper and others, Respondents.

Civil Misc. Writ No. 584 (1955) (2d 10-10-1955)

V.P. Urban Buildings (Regulation of Lodging, Room and Entrance) Act of 1971, Sec. 1A, 2b — Relationship between — Applicability of the 10 and 11 — Application under S. 11 by landlord — Relationship of landlord and tenant regarding when application was made — Application was maintainable.

A. present of the provisions of Sec. 10 and 2b (b) that the landlord has a right to make an application under section of these provisions, but there is a distinction. In case there is a letting (lease) and the landlord needs release of the accommodation then he cannot make an application under S. 10 of the Act. In case

the tenant has vacated the accommodation and the relationship of landlord and tenant has ceased then it that there is application under S. 10 would be appropriate. The key of the matter therefore is what is the stage of relationship between the parties when the application for release is made. If there is no continuing relationship of landlord and tenant between the parties and if the parties is co-tenant or not a tenant or subtenant accepted, then as that event the landlord's ground under S. 10 by taking the plea that there is a deemed vacancy. Similarly where the tenant had shifted from the accommodation taking his bag and baggage, it will also amount to a deemed vacancy.

(Para 12)

The learned District Judge under S. 11 claiming that the tenant has moved from the rented premises and the accommodation be released as his tenant. The learned stated that the tenant had shifted to some other city for working by himself and did not need the accommodation. Two of the respondents were allowed to occupy the disputed premises and they paid rent in fulfilment of the tenant.

It is that the landlord was justified in moving an application under S. 11. Had he filed an application under S. 10 in case of a deemed vacancy it was possible for the tenant to raise a plea that the application was not maintainable on the relationship of landlord and tenant subsisted between the parties. The very fact that the tenant was being paid by the landlord established that there subsisted the relationship between the parties in landlord and tenant capacity. The landlord could not be also sued merely on the ground that he had received rent under S. 11. Case for the Deponent.

(Para 12, 21, 22)

Cases Related Chronological Order

1954-1 AB Rom Cas 478	1
1971 AB (2) 1307	107 (1971) SCC 171
1971 AB Rom Cas 103	10 12

T. H. Zaitz for Prisoner & M. Abdul Wahid for Standing Counsel for Respondents

**ORDER** — This writ petition for writ filed by a tenant challenging the order of the Provincial Authorities and the Appellate Authority dated 20-4-1971 and 14-10-1971 is dismissed. 1 and 2 respectively. Prisoner v.

place, in short, is that the application under § 20(1)(a) of the U.P. Urban Buildings Regulation of Licensing, Rent and Foreclosure Act, 1973 (hereinafter referred to as the Act), was untenable and liable to be dismissed.

3. The case was heard on the 10th of May 1986 when only learned counsel for the petitioner Mr. N. H. Kulkarni and one counsel appeared for the respondents on that day. Subsequently Mr. C. A. Mayal and Mr. M. C. Gupta learned appearances on behalf of the respondents and they later were heard on 25th of Nov. 1986.

3. One of the respondents Mrs. Taruman Begum is reported to have died on the 15th Feb. 1986 and an application was made to make a note that her facts are already on record as respondents 3, 5 and 6. The application under O 22 & 2 of the Code of Civil Procedure was allowed and a note was made that the proposed item was already on record.

4. A few relevant facts. One Dr. Mohanlal Hyat was the landlord of House No. 88/126 Changan Ghat, Karpur. The petitioner Akhlag Ali Khan was a tenant thereof. Dr. Mohal Hyat received an application under § 20(1)(a) of the Act and prayed for two reliefs viz. that the tenant be evicted from the accommodation in the tenancy and possession and secondly that the tenant be removed from the premises. He refused to remove the tenant from the premises on the basis of the petitioner Dr. Mohal Hyat. Before the proceedings in the Court of the Prescribed Authority, Karpur had come to an end. Dr. Mohal Hyat died. His widow Mrs. Taruman Begum, his son Akbar Hyat and two daughters Mrs. Zahida Khanom and Mrs. Arshida Khanom were retained as tenants. In para. 11 and 12 of the application under § 20 states that the landlord alleged that the tenant was lame and had been employed in M. A. M. Degree College, Changanpur and had been terrorizing them for the last two years. He had kept the accommodation locked and allowed the adjoining tenant to use it. Further he had defiled completely to Changanpur and paid rent through J. Akmal Ali, Advocate. The landlord further alleged that he needed the accommodation for use for himself and his

family and son. The landlord was living in a house at Colonel Ghat, Karpur which was contiguous and the house was situated at the end of a long lane. He was a practicing Advocate needed accommodation for a good and proper office. The landlord stated the number of his family members and stated the requirements on the above mentioned grounds.

5. The written statement of the tenant was a denial of those facts as regard to his working in Changanpur there was no denial. He admitted that he was working in Changanpur but stated that he was not established there. In reply to the contents of para. 12 of the application it was shown that rent was paid up to then, 1973 by Dr. Akmal Ali who occupied a portion of the house. It was denied that the landlord had any person need for the accommodation, there was a house in the adjacent lane which was suitable in all respects, being open to air light, free from dampness and distance and easily accessible. Even for the reason of becoming a lawyer that house was suitably located. Lastly it was alleged that the application was moved with bad faith and intention.

6. The prescribed Authority after considering the respective cases of the parties came to the conclusion that the tenant had submitted that he was not living in the accommodation in Changanpur when he was employed in Changanpur. The Prescribed Authority further found that no member of the family of the tenant was living in the house. It relied on the alternative submission offered by the landlord the Prescribed Authority was of the view that since the tenant did not live in Karpur because of alternative accommodation was not to be established. He found the requirements of the landlord to be bona fide genuine and genuine. Consequently he allowed the application by his order dated 26th 1978.

7. On appeal the V.M. Adil Chaudhary Judge, Karpur affirmed the findings of the prescribed Authority that the tenant does not reside in the accommodation in and does not require the accommodation primarily for his use and occupation and had evicted. On these findings he held that the claims of the accommodation in favour of the landlord would require no finding to the tenant. On a comparison of

laying of the parties, the Appellate Authority allowed the finding of the Taxpayers' Authority that the landlord would suffer genuine hardship and accommodations in order the application for release was not allowed. The appeal was accordingly dismissed by the engaged order dated 14th Dec. 1984.

8. There upon the present writ petition was filed. In this petition, Mr. B. M. Zaidi, learned counsel for the petitioner argued that the application under S. 21 of the Act was recommended. The landlord should have acted for release under S. 21 of the Act. He referred to para (1) and (2) of the application for release, wherein the landlord had stated that the premises had shifted completely to Chappal and one Mrs. Jamil Ad and the tenanted whom were Admittance, were occupying the accommodations at no. Mr. Zaidi submitted that if the act of the release is staying himself from Rumpus to Chappal was a fact then the provision of S. 21 of the Act were attracted and the landlord's remedy by way of an application under S. 21 of the Act, laid in application and to be made before the District Magistrate. On this count, he urged that the Petitioner's Authority and the Appellate Authority erred in allowing the application for release of the accommodations at no. 14.

9. Admittedly, the above submission of Mr. Zaidi was not made before the District Authority and the Appellate Authority. The point has been raised for the first time in this Court. Therefore the learned counsel for the parties in this point.

10. In support of the submission Mr. Zaidi relied on a decision of a learned judge of the Court in *Adick Rumpus v. E. C. Farmer* 1979 All India Civ. 193. In this case, the learned Judge has taken the view that where the remedy has occurred, the question of release under S. 21 did not arise. The fact of this case is that, Dr. Adick Rumpus the petitioner was the landlord of a double storied building. He rented with his family residence on the first floor. A portion of the ground floor had been let out as an Income-tax Office. The remaining portion of the ground floor was in possession of the landlord. Respondent E. C. Farmer was an applicant to the District Magistrate for the release of accommodations which was going to be vacated by the Income-tax Office. The

respondent's case was that he had been evicted in place of Shri O. P. Agarwal, the Income-tax Officer. On the same day Shri O. P. Agarwal, the Income-tax Officer also appeared to the District Magistrate about the remedy. The District Control and Revenue Officer issued accommodation for respondent instead of issuing an application under S. 21 of the Act the petitioner filed an application under S. 21 of the Act. The District Control and Revenue Officer allowed the application under S. 21 in spite of a compromise and closed the premises in favor of the petitioner. Subsequently, the District Control and Revenue Officer allowed the premises to E. C. Farmer. The order of allotment, however did not give the details of the accommodations which had been let out. The respondent E. C. Farmer made application for a correction to be made in the allotment order for inclusion of his most rooms. The was allowed by the District Control and Revenue Officer and thereafter a two premises was let out to the Court. The question, then arose for release under the writ petition was about release application under S. 21 of the Act. The learned single Judge held that a landlord compromise could be raised in proceedings under S. 21 but he held that when the writ petition had made an application concerning vacancy and no application for allotment had been made by respondent E. C. Farmer, the Petitioner's Authority was not justified in making an order of release under S. 21, on the basis of the compromise. It was further held that the proceedings taken under S. 21 were collusive. The learned single Judge observed:

An application under S. 21 can be filed against a sitting tenant. A case under S. 21 is different from the one covered by S. 21. Where, no law vacancy had occurred, the question of making release under S. 21 did not arise. The premises in this case could not have been released. In fact, the application had been not maintainable and, as such, the writ petition should not have been allowed. Accordingly, the petitioner's case succeeded on the basis of the release made in proceedings under S. 21.

I have referred to this case as stated, for it would be noticed at once that in this case no remedy was the sitting tenant himself had occurred of the possession of vacancy. It was a public person and was vacating the premises on the basis of the transfer from the district. In such an event there was no

intention of vacancy. The proper solution to the flow chart is, I think, that the mere attainment of the accommodation after vacancy to the landlord, consequently, in the absence of an application under S. 21 of the Act for the release of the accommodation on the basis of a compromise between the two parties, and the landlord could not be deemed to be a tacit compromise and accordingly the release order under S. 21 of the Act was right, as said.

12. A perusal of the provisions of ss. 18 and 21 of the Act shows that the landlord has a right to make an application under either of these provisions, but there is a distinction. In case there is a rising tenant and the landlord seeks release of the accommodation then he must make an application under S. 18 of the Act. In case the tenant has severed the accommodation (either relationship of landlord and tenant has ceased, then in this event an application under S. 21 of the Act would be appropriate. The crux of the matter therefore is what is the range of relationship between the parties where the application for release is made. Absence of continuing relationship of landlord and tenant between the parties and the person in occupation is not a tenant or presumed tenant, then in that event, the landlord can proceed under S. 21 of the Act by filing the plea that there is deemed vacancy. Similarly, where the tenant has shifted from the accommodation taking his key and baggage it will also amount to a deemed vacancy.

13. The facts of the present case are slightly different. Although the landlord had claimed in the present case that the tenant had stated to Ghanpaty Bhatkar that he had some one named that he had allowed one of his neighbours to occupy the disputed premises and they had paid rent in behalf of the tenant. The payment of the rent implies the continuance of vacancy, even though the tenant was never living in the accommodation. In *Aspatari*, two versions of para 10 and 12 of the application for release undoubtedly speak about the shifting of the premises for staying to landlord in *Ghanpaty*. That apparently has been made to show that the tenant did not need the accommodation. The very fact that rent was being paid to the landlord in behalf of the tenant indicated that the relationship between the parties i.e. landlord and tenant subsisted. In the event of the matter the landlord was justified in moving an

application under S. 21 of the Act, that he filed an application under S. 18 of the Act to recover alleged vacancy. It was possible for the tenant to raise a plea that the application was not maintainable in the relationship of landlord and tenant subsisted between the parties.

14. Learned counsel for the respondents, referred to a decision reported as *MLJ* (1947) 179MH 102 All Ind. Cas. 474 *Kashan Sarabhai v. Hdf. Adb. District Judge Lucknow* and the persons who were landlords of a residential building made an application under S. 21 of the Act on the ground that they wanted the accommodation for their own. The application was opposed by the tenants, but the same was allowed by the Prescribed Authority. On appeal, the Appellate Court held that they are that the provisions should have applied under S. 18 and not under S. 21 of the Act and as such, the appeal was allowed. Thereafter the landlords moving up in the Court in two parties under Art. 226 of the Constitution. The Appellate Court held that S. 21 of the Act was attracted because the provisions provided that the opposite parties were not living in the house for the last several years. One was living inside the country and another in Deoband, and some strangers were living there. On this the Appellate Court held that there was a deemed vacancy within the meaning of S. 21 of the Act. The learned single Judge however held that this was a case under S. 21 of the Act and not under S. 18 of the Act. He noticed that the case was covered by the reasons before the Prescribed Authority and then had also filed an appeal. It was, therefore, not a case where the tenant had already ceased to take any concern with the house. The learned single Judge otherwise observed:

"It was therefore surprising that the respondent pressed on behalf of the tenant that the house was vacant as the case of his should have been accepted by the appellate Court for throwing out the landlord's petition under S. 21. If the tenant had really ceased to occupy the accommodation and the house was left deemed to be vacant then they had no grounds to move on the appeal and the appeal should have been dismissed on that ground instead of being allowed."

The Court further observed that the reasons

plus which had been done with the appellant's Court was clearly ascertainable. It was further held that certain circumstances were essential as a building is would require a suit under S. 20 on the ground of such being not an application under S. 21 on the ground of failure of building at the instance of the landlord. It was then observed:

It is open to the landlord to permit entry of the tenants and non-payment for default merely, in the ground that another remedy was also available to him.

I am in agreement with this view taken in the above case. The facts of the present case show that the tenant had not come to an end and so early an application under S. 21 of the Act was maintainable. The landlord's contention was rejected merely on the ground that he had another remedy under S. 16 of the Act. This decision is the case of *The Ashok Kumar v. S. C. Puri* (1979 AIR 888, Cal 102). It appears a clearly distinguishable fact. There was no other remedy in that case that there was existence of vacancy and an application under S. 16 of the Act lay in such a case.

14. A Division Bench of the Court at Calcutta has also held in *Aditi Das v. Suresh Singh Sahasranga* (1979 F.P. (BHC) 577, (1979 AIR 1) that when a landlord can apply both under S. 21 and under S. 16 of the Act, he may elect the above. I am so inclined at the conclusion of the learned counsel for the petitioner that the application under S. 21 of the Act was not maintainable and also the landlord should have applied under S. 16 of the Act. As far as the question of the remedy is concerned, I have found the landlord's contentions, first of all, to be wrong in view of the findings arrived at by the Prescribed Authority and the Appellate Authority. No legal flow in the findings could be established. In my opinion, the application for orders under S. 21 of the Act was maintainable.

15. No other point was argued.

16. For the reasons stated, and also the reasons just stated and it is decreed with costs. The petitioner's case is allowed two months time to execute the decree and to deposit.

Petition dismissed.

1980 AIR 1, 1 (18)

A. N. DEBATHA, J.

Smt. Kishore Devi Petitioner v. W. Add. District and Sessions Judge Sahasranga and others Respondents

Civil Suit No. 732 of 1980 (Dr. S. C. 1980)

**L.P. Rights Buildings (Reg. Tenants of Lodging, Board and Shanties) Act (19 of 1971), S. 16.—** Application for release of premises by landlord — Petitioner claiming allotment of premises can neither participate in proceedings nor can file objection to application.

The matter of release of a tenant concerning the Durrat Maganmala House was the subject of the present case. No other person has been given any such right either to participate in such proceedings or to file objections against it. The need of landlord is not liable to be balanced against other claimants. The consideration of need would be deemed to be a matter open to between the landlord and the Durrat Maganmala. The Durrat Maganmala has only to be satisfied before releasing the accommodation in favour of the landlord that need is bona fide and genuine. Any other person has no right of raising an objection to participate in the proceedings against the release application or against the order passed by the District Magistrate releasing the accommodation in favour of the landlord. Participation in such proceedings is not a right. Participation avoids proceedings. W. P. No. 732 of 1980 (Dr. S. C. 1980) (AIR 1980 Cal 102).

**Order Relieved Channappa, Pura W. P. No. 732 of 1981 (Dr. S. C. 1981) (AIR 1981 Cal 102).**

Vandana Singh for Petitioner, Standing Counsel for Respondents

**ORDER.** — By means of this petition under Art. 226 of the Constitution of India the petitioner has prayed for quashing of order dated 1-4-1979 passed by the District Magistrate, Haridwar, and the order dated 3-3-1980 passed by the Additional District and Sessions Judge Sahasranga, declaring the services which have been filed as valid and I find it appropriate in this regard.

2. In furtherance of the petition.

ADVOCATE/80/TCD-889

— the landlord of premises No. 346 located at Laxmi Road, Hardwar. The ground floor of the said premises comprises of two rooms, 1 kitchen, 1 bathroom, 2 balconies and one verandah. The first floor was constructed sometime in 1974 and was let out to one Ranade Chandra Goudam in 1977. A water-tight roof is provided on the ground floor in occupation of Prem. Prakash was secured and situated at the end of the premises with order of the Ranade Magistrate dated 3-12-1976. Later on another portion on the ground floor in occupation of other big Kumar or Prem Prakash was also vacated. This portion consisted of six rooms one small kitchen common terrace and common bathroom.

3. Initially a dispute in regard to vacancy was raised by the petitioner while a few other persons participated in the allotment of the portion in their favour against the portion had been vacated. However, the Ranade Magistrate declared the portion as vacant. The petitioner then applied for the release of her portion in her favour on the grounds that both life and personal need while other persons exceeded the requirements of the petitioner and such parties for the proceedings of opposing the release application.

4. The petitioner had come forward with the case that she was suffering from heart ailment and as per the advice of the doctors she had decided to stay permanently at Hardwar and travel Prayagraj once her husband was carrying on business. It was also stated that the petitioner was congenitally weak lady and wanted to devote the rest of her life at Hardwar which was a sacred place for Hindus. A portion under ground floor having, common staircase of bathroom and kitchen had already been allotted in her favour by the Ranade Magistrate Hardwar vide his order dated 5-12-1976. As the same work help it was necessary that her son and daughter-in-law should also reside at Hardwar to look after her and to provide necessary help and assistance. The portion in dispute was then required personally and home life for the residence. The portion in dispute was then required personally and home life for the residence after son and daughter-in-law as it was not possible to accommodate them in the same which was in petitioner's occupation. The requirements of the petitioner were manifest from the order of the Ranade Magistrate

dated 3-12-1976 was disposed and opposed by Atulish Kumar and other persons, who participated in the proceedings. Some officials of other persons were that the Atulish Kumar collection does up the need of the petitioner. The Ranade Magistrate vide his order dated 3-12-1976 rejected the release application, and order for the consideration of the application for allotment were passed.

5. A revision against the order dated 3-12-1976 was preferred to the Court of the District Judge which was transferred to the Court of VI Additional District and Sessions Judge Subarnapur for disposal according to law. The revision was also dismissed by respondent No. 2 vide his order dated 12-8-1980.

6. Finding against by the order dated 8-1-1979 and 17-11-1980 passed by respondents Nos. 1 and 2 the status person under Art. 226 of the Constitution of India has been performed for opening the said order.

7. Court for the parties have been heard.

8. The petitioner had claimed the release of a portion on the ground floor comprising of a room, a small kitchen, common terrace and bathroom. The portion has common staircase of bathroom and kitchen with the other portion on the ground floor. One of the portions on the ground floor had already been allotted in her favour on 5-12-1976. The portion is in occupation of the petitioner. The other portion in dispute which is in form of the portion occupied by the petitioner was sought to be released on the ground that a was required by the petitioner to accommodate her son and daughter-in-law so that they may be able to look after and assist the petitioner in her ailment. The respondents Nos. 1 and 2 did not consider the request of the need and raised were to examine the propriety or the constitutionality of her ailment. The applicant was really anxious to move of the applicant fact that the portion occupied by her already being released on the ground of her chronic and chronic ailment of months back. Further it may appear to be incomprehensible that the petitioner only because back adjusted the need of the petitioner to her home life and personal when the petitioner stated release of a portion on the ground of her ailment to stay permanently at Hardwar and move so on





alleged that the tenants had also purchased a shop which was in the possession and hence could itself be business without any hindrance. The tenant's case was that the shop was purchased by her father in favour of his minor sons. It was admitted that the husband, a husband and that the said two brothers, as her sons, sleeping room in a small house where they lived. Instead of considering the material evidence on record as to why her place was sufficient for every requirement or use, the Court below on the facts found that shop near the husband and son of husband, was having a laboratory in their house their need was not genuine. The husband by entering a rent lease had evicted the son of other shop which was not made available to another tenant. The lower appellate Court without considering the material evidence on record held that the husband before the entry into a lease by executing a rent lease when it was not the case of the tenants that the other shop was vacant prior to the execution of the rent lease. The lower appellate Court also awarded a finding that although the alternative accommodation was available to the tenant he would find dearth of space as compared to the shop in dispute. Relying upon an alleged will it said that although the shop was being vacant it could not be made available to the tenant as it belonged to his sons. It could be inferred from the evidence that the alternative accommodation was purchased primarily by the tenant's father in his own name.

Held that the finding of the lower appellate Court was liable to be quashed being based on law and being based on a wholly perverse approach. In the circumstances of the case the matter was remanded to the lower appellate Court for disposal after considering the material evidence on record. (Para. 12-21)

#### Cases Referred Chronological Form

1994 All LJ 206 1994 All SC Cr 113 in

S. C. Sharma, for Prosecutor S. N. Agrawal, Standing Counsel and Anand Nath Singh, for Respondents

**CRIMINAL —** The ex post facto under Art. 20 of the Constitution among rest of proceedings under the P. U. Urban Building Disputes Act 1973 transferred referred to as the Act. The appellant is charged a shop situated at Sonam Dargah

(Saidpur) Ganga Mohalla in the Sonam Dargah, district Delhi. The petitioner Smt. Karam Devi is the landlady. Smt. Shagun Karam son of late late Mohan Mohan Agarwal a the tenant and a respondent No. 2 is the respondent Respondent No. 2 son, the shop in dispute on rent by a respondent known deed for a period of 9 years which was in dispute on 21-10-77. Since the tenant did not vacate subject of dispute of the period of time, the respondent landlady filed an application on 27-07-77 for the return of the shop in dispute under the provisions of 20-10-77 of the Act. The return application was filed on the ground that the petitioner required the accommodation for carrying on the business for her husband and her son. It was alleged that the husband and son of the petitioner had acquired various shops, such as training, and respondent in the district and the respondent and also wanted to set up their business of Karam Devi and Sonam in the district accommodation. In the petition for return it was further specifically alleged that Shagun Karam had purchased a shop No. 174 situated at Mohalla Mohan, Ward No. 1 in the district of Karam. The shop was purchased by Shagun Karam in the name of his minor sons Anil Kumar and Jyoti Kumar. It was also alleged that the shop No. 174 was purchased by Shagun Karam and that he is carrying on business of a shop in the said shop. The facts go to show that the tenant Shagun Karam had an alternative accommodation in which he can shift his business without any loss or hindrance.

2. The tenant contended the application, it was alleged by the tenant that the shop in dispute was required from the landlady for setting up her husband and her son in the district and the respondent. It was further alleged that the shop No. 174 has not yet been purchased by him but the said shop had been purchased by the father of the minor sons Anil Kumar and Jyoti Kumar and that in the said shop the father was doing separately other business. The tenant further alleged that, in fact, he had purchased from the landlady and that he had undergone the said the father or his business. It was also alleged that the landlady wanted to get the shop vacated so that the shop be in fact to some other tenant in higher rent. It was also alleged that the landlady has made a house in her possession in Karam and has also large number of properties including the shop in the district.

3. In reply to the application made by the

tenant opposing the proposed application, it was specifically urged by the petitioner that she had no other shop in Karpang in which the business of Radio Sales and Service can be established by her husband and son. The petitioner was had executed a trading and commission in the year 1975 and thereafter licence was obtained for running the Radio and Electronic Sales and Service shop in May 1976. Since the lease of the disputed shop was in vogue in May 1977 she filed suit for the return of the shop in July 1977.

4. It may be stated here that during the pendency of the case before the prescribed authority Madan Mohan Agarwal, father of the tenant Bhagwan Saran died and consequently it was further urged before the prescribed authority by the petitioner that after his death on 22.11.64 the tenant Bhagwan Saran is the only adult male member in the family. The matter was referred by the prescribed authority in detail and by an order dated 26th July 1981 the application of the petitioner was allowed by the prescribed authority. The prescribed authority reported a categorical finding that the petitioner had a bona fide need for the disputed shop to establish her son and husband in the Radio Sales and Service business. She has no other accommodation available in Karpang. The tenant Bhagwan Saran had purchased the shop No. 174 deliberately at the time of his death soon so that he may not have to vacate the disputed shop. It was further found that the said consideration for the said shop had been paid by Bhagwan Saran and that as it was established he found that the corner between Bhagwan Saran and his father Madan Mohan Agarwal were essential. It was also observed by the prescribed authority that Bhagwan Saran had got the shop No. 174 torn and and it is consistent with sufficient accommodation in the business. In the view of the matter on a comparison of the price of the land/plot and the estate, it was found that the price of the land/plot was primary and as such the volume application was allowed.

5. The judgment of the prescribed authority dt. 26-7-1981 was challenged in appeal under S. 22 of the Act. The appeal came up for hearing before the 19th Additional District Judge, Dab who by his judgment dt. 26th April, 1982 in-

vested the judgment of the prescribed authority, and dismissed the application under S. 22 of the Act. The appellate Court reversed the finding recorded by the prescribed authority, and held that the need of the land/plot is a mere legal title or genuine. On the question of finding the appellate Court recorded finding, that no tenant has ever fully or to be vested to the petitioner by refusal to grant the volume.

6. Aggrieved by the decision dt. 26-4-1982 the land/plot has filed the present petition in this Court.

7. The parties mainly came up for hearing before this Hon. B. N. Dey, J. After hearing the learned counsel for both sides before the Court was of the view that in view of death of Madan Mohan Agarwal on 22.11.64, the case requires further investigation and consequently the case was remitted to the Court below for decision on their merit after giving an opportunity to the parties of leading evidence. There were remitted to the Court below by order of Honble B. N. Dey, J. dt. 22-12-1982 and as follows:—

(i) Whether Bhagwan Saran Bhagwan Saran has obtained proprietary or statutory right in shop No. 174 Mohalla, Mohan. Ward No. 3 Karpang consequent upon the death of Madan Mohan?

(ii) Whether the case of Bhagwan Saran as existing on business at the address shop in the shop is available to Bhagwan Saran?

(iii) Whether the address/shop available as an alternative accommodation in Bhagwan Saran?

8. In the order dt. 25-11-1982 it was further observed that it will be open to the appellate authority to make the case of Bhagwan Saran namely Anil Kumar and Sandi Kumar parties to the proceedings in that they can give their version regarding the shop.

9. After the cases were remitted by the Court, the Court below made an interim and Sandi Kumar control Bhagwan Saran regarding the proceedings. The case consequently also led to the Court below. The Court below by an order dt. 26-4-1982 reversed the finding of the Court. It recorded a finding that Madan Mohan Agarwal had executed a will in favour of his grandson Anil Kumar and Sandi Kumar and as such Bhagwan Saran did not have

property registered for shop No. 174 indicates the subject status of the will from his father Sir Victor Morgan agreed. The shop No. 1 consequently, was located in Nigeria.

10. So far as the second issue was concerned, it is submitted that the learned Judge was not carrying on business in shop No. 174 but the shop is also not available to Shapoorji Sonji for carrying on the business.

11. It is argued that the issue was held that the shop No. 174 is available for cloth business. It has however much cloths space available as it is adjacent to the disputed shop. It is the shop No. 174 is available to Shapoorji Sonji. Shapoorji Sonji will not speak of same as compared to the shop in dispute in carrying his cloth business in shop No. 174.

12. After the above mentioned findings were returned to the Court, the case was argued before His Hon. B. N. Judge J. He allowed the case and decreed that case was decreed to be listed before me.

13. I have based the learned counsel for the parties in length.

14. I discussed with various witnesses seated on behalf of the petitioner and they the findings returned by the Court before as well as the findings returned to the Court by judgment dated 21-4-1976.

15. The first circumstance stated by the learned counsel for the petitioner is that the finding recorded by the lower appellate Court that the need of the petitioner is that he and his wife live in private is a finding which remained in law, inasmuch as the Court below has not considered the material evidence on the record and has also ignored relevant evidence that is presented.

16. The first aspect on which the Court below has held against the petitioner is that since petitioner's husband and his son are already living in a laboratory and room in her own house, the need of the petitioner is not to live in private. It is not disputed on ex-Godfather the house in which the laboratory has been installed primarily is not the own house of the petitioner. Thus he will be a wrong message as whether the Court below has proceeded. The scope of the affidavit filed

in support of the relevant application has been accepted as Annexure 1 to the petition. In para 22 it was specifically stated by the petitioner that the house in which the laboratory has been fixed primarily was the second house. In the second statement the fact has been mentioned in it, therefore clear that as stated above, the Court below has proceeded on a wrong assumption that the house in which the laboratory had been temporarily located, is the own house of the petitioner. It was the contention of the petitioner that her husband and son had set up a laboratory in the sleeping room of the son in the second house in which they were living instead of considering the material evidence as stated in whether the place was sufficient for carrying on the business or not. The Court below earlier very time has held that since the petitioner's husband and son are having laboratory in the house there need is not genuine. This also is a very strange approach. In the affidavit filed in support of the relevant application, specifically petitioner's husband made this the laboratory had been set up in the bedroom or other house and wife can use for doing any business as actually any business was carried on. In the written statement, the respondent stated that not even then the petitioner's husband and son can carry on business in the house in which the laboratory has been set up. Another witness set up that the respondent can come there. Even without any room having been set up on the part of the respondent, the lower appellate Court simply on the basis that there was a laboratory in the bedroom order of the petitioner declared the case of the petitioner as being not genuine or bona fide. No material has been considered which was relevant for coming to this finding and the approach of the appellate Court is changed a very approach, whereby petitioner.

17. The other circumstance which has been considered in respect of the finding is that the petitioner is a non-tax paid. It is 1976 that he set another shop in son Pankaj's house. It is not stated that Pankaj was already a tenant in the shop for a very long time and the only purpose for removing the son was to, in 1976 was for removing the son. It is not a case where a shop which was long since was to be set on a 1976. In case the shop was vacant, no doubt it would be a

relevant circumstances that instead of entering the shop the petitioner for use the shop as some other person has where the shop was vacant all around and the respondent works for the purpose of conducting the same business possible to find the by more over using a well well dated 1776 the petitioner used business was previous to defendant. Also clear from the record the petitioner entered the room as Ram Agar was occupying the shop for a very long time and on the other hand the facts of the shop in front of the tenant Bhagwan Das was clearly not open very clearly and it was also clear that Bhagwan Sern had no alternative accommodation where he could run his business. The petitioner therefore rightly filed a interim application for vacation of the respondent No. 2 and only obtained the rent so far as Ram Agar was concerned. The Court below acted illegally and with material irregularity in not considering the material evidence on the record, or based some or aspects of the finding and/or awarded the relevant evidence just to find that the petitioner's need was not genuine. In my opinion, the reference made in the learned court for the petitioner is well founded. It is necessary, in the interest of justice that the matter should be reconsidered in proper perspective.

11. In *N. S. Dora v. With Addi Das, Judge, Allahabad 1994 All India Civ 115* (1994 All India Civ 115) the Court made the view that if a person makes a shop/stop arrangement in the absence of his being able to carry on the business properly, then that is of no consequence. Merely because the petitioner's was opened a laboratory in his own business for the purpose of obtaining a license to equip himself in carry on the business of laboratory and there is no need for order to hold that his requirement is no longer there and that the need is not bona fide. In fact the respondent would on the other hand show that there was a genuine effort on the part of the petitioner to open a laboratory in the bedroom so that he stop, manage all the process which is required for the purpose of carrying on regular business as a proper accommodation. As found above the approach of the learned Judge Court may go to the finding wholly a previous approach.

12. Learned counsel for the petitioner has

learned challenged the finding recorded by the Court below that petitioner's findings will be, stated to the respondent No. 2 in case the application for interim is allowed. The court of the petitioner in this respondent No. 2 has no alternative shop No. 174 located in Mohan Mahan Road No. 3 within town of Kanpur. The shop was purchased by name's Shree as Sanshodhanee name of the name was after the death of Mahan Mahan Agarwal father of Bhagwan Das the shop which was, among the shop in question is being vacated and is available with the respondent No. 2 and hence the question of finding in the respondent No. 2 does not arise.

13. I have examined the finding given by the learned appellate Court in the judgment of 18-4-1995 in regard to the availability of the shop No. 174. The finding is stated as follows: I have also examined the findings recorded in the judgment of 21-4-1995 which were recorded in the Court in an opinion. These findings are also stated as follows: They are based on a wholly previous approach. In fact this is one of those cases where if the facts are seen in the proper perspective, it would be determined that the need is a very, very person and he has made out the circumstances after another and has got various documents with a view to acquire the possession of the shop as before. The conduct of the respondent No. 2 shows how a person can take undue advantage of the provisions of an Act which had been promulgated with the object of regulating the exercise of certain rights and not of general public. The Act did not contemplate to protect children's interests.

14. It is not disputed that the property was taken by the respondent No. 2 from the petitioner in a lease deed for a period of ten years. The term of the lease was to expire in May 1977. On 3rd Dec. 1980 (1977), nearly about year and half before the expiry of the term lease, a registered partition deed was got executed between the father and sons, namely Mahan Mahan Agarwal and Bhagwan Sern and his wife Mrs. Radha Devi. In response to it I find nothing was to be purchased. The only purpose of executing this partition deed was to state clearly that the intention of the father with the son was not to be purchased. After the partition deed was executed on 19th Feb. 1978, shop No. 174 was purchased in the name

of Asha Kumar and Sashi Kumar, the minor sons of Bhagwan Sanyal. The order of shop No. 174 filed as affidavit clarifying events that the accommodation for sale (shop No. 174) was paid for Bhagwan Sanyal. The parties died at well as the defendants were examined by Bhagwan Sanyal so that the petitioner in an subsequent judgment could not say that Bhagwan Sanyal had an alternative shop. It has further stated a sentence that after the purchase of the said shop it was increased and the shop was mainly reconstructed. No business was being carried on by anybody there. The sons Asha Kumar and Sashi Kumar are also are not carrying on their business. In spite of the finding it is not conceivable how the Court below has recorded a finding that on a comparison of the handwriting of the husband and minor the handwriting of Bhagwan Sanyal would be genuine.

22. It is very interesting to note that when the matter was remanded by the Court and Asha Kumar and Sashi Kumar were made parties to these proceedings, they contended that the property was purchased before. Yet the Court below in its judgment of 21-4-1984 stated that the affidavit of vendor was of no value and requested a finding that Madan Mohan Agarwal became the owner of the property in dispute. It is pertinent to note at this stage that the plaintiff did not impudently by not arising other circumstances discontinue himself from the shop No. 174. He after the death of his father Madan Mohan Agarwal professed to will alleged to have been executed by Madan Mohan Agarwal, by father which was corroborated and further signed by Madan Mohan Agarwal. Only Madan Agarwal's name was alleged to be there on the alleged will and this was produced to show that after the death of Madan Mohan Agarwal, the right in the shop went to his sons, Asha Kumar and Sashi Kumar. The Court below in its judgment dated 21-4-1984 held that the will was forged and unsigned. Yet the Court below asked shop No. 174 with material irregularity, in the exercise of her jurisdiction in finding against the petitioner relying statements on the will. It has further found that the shop is not available with Bhagwan Sanyal. A further finding has been made by the Court below that the shop No. 174 is made available to the Bhagwan Sanyal. The Bhagwan Sanyal will find that the material discrepancy in the present shop. There

findings are also in the opinion stated in the second consideration. The lower appellate Court had found categorically that the shop was being taken for merely business, not for the shop belongs to Asha Kumar and Sashi Kumar, therefore it held that the shop was not available to Bhagwan Sanyal. There is no evidence on record that the witness between Bhagwan Sanyal and his son, agreement. This finding also on the judgment is dated 21-4-1984 in my opinion is clearly stated in law. It is not necessary that majority view there should be equal alternative accommodation available then with the application for release can be allowed. Death of spouse alone cannot justify a plea for finding that the alternative accommodation was not available. The approach adopted in the finding is also erroneous.

23. From an overall reading of the judgment of 21-4-1984 it is clear that the shop No. 174 is being taken it has been reconstructed. It has been purchased in the name of the sons of Bhagwan Sanyal before and it is a stated that the shop is dispute. There are relevant facts which will have a bearing on the finding in regard to hardship. I am fully satisfied of the opinion, that the judgment of the Court below in recording a finding in regard to the question of hardship is highly erroneous and perverse and the error that is related to that question needs re-examination by the Court below again in the right perspective also considering the facts and requirements of the case. The submissions made by the learned counsel for the petitioner has substance.

24. In the result, I allow the petition, quash the judgment of the lower appellate Court of 21-4-1984 and 21-4-1984. The case case is remanded to the lower appellate Court for decision after considering the entire material evidence on record. The application for release was filed in 1977, eight years had already elapsed. The husband and son of the petitioner are aged and in order to do justice to the cause, it is necessary that the matter may be taken up promptly and be disposed of expeditiously. I accordingly direct the lower appellate Court to dispose of the appeal within three months from the date of the certified copy of the judgment is filed before the appellate Court. The petitioner shall be

credited to her costs from the respondent No. 2.

Prisoner offered

# 1986 ALL L J 488

A N. DEEMITA, J

See Sensibala Rajgopal and others  
Prisoner v. TV Advt. Des. & Services Judge  
Mandolabad and others Opposite Parties

Civil Judge, Waco Pet No. 1553 of 1985 (S  
8-10-1985)

(A) 1. P (Temporary) Content of Bail and  
Execution Act 1967, S. 70(1), (2), (4) — Deposit  
of sum under — Nature of demand returned  
back with remark 'bail not' — Terms-depositing  
sum under S. 70(2) instead of paying it in  
bail bond — There is no payment in bail bond  
within provision of S. 70(2) — Terms would  
be deemed to be a default and liable to  
execution.

A copy of the order would be deemed to be  
issued about execution of notice whereas the  
sum was deposited and it was made clear that  
the party issuing notice was sole owner of  
prisoner when the notice was received back  
with the remark 'bail not' and the terms still  
to finance the payment of sum in bail bond  
deposited under S. 70(2) a condition be  
deemed that payment had been made in  
bail bond within provision of S. 70(2). Once  
the demand bail bond made a clearly specified  
the condition of bail bond to accept sum and a  
deposit under S. 70 of Act thereon it would  
not protect the notice. 1973 All LJ 488. Bal  
on.

(Para 3)

(B) Evidence Act 1973, S. 14 — Nature  
of demand and execution sum in bail bond  
returned — It would be deemed that notice  
know about contents of notice under was not  
for bail bond to have proved the same. Case  
the defendant.

(Para 2)

Case Related Chronological Facts  
1973 All LJ 428 All 1973 All 441 7 B  
All 1971 All 172 8  
1973 All LJ 396 All 1973 All 445 1981 4 B  
All 1984 All 33 5  
All 1981 All 44 4

M. A. Qadiri for Prisoners, Hqs. (Sub  
Advt. 4, 5, 6) Singar and Bhandari/Crimal,  
for Opposite Parties

**ORDER** — The present petition under  
Art. 226 of the Constitution has been filed for  
the prisoners praying for issuing a writ of  
certiorari for quashing the judgments and order  
dated 19.12.85 of the Sessions 1 to the present  
and judgments and order dated 2.8.1974  
of the Sessions 2 to the petition passed by  
respondents Nos. 2 and 1 respectively.

2. The facts in brief go as follows: The  
prisoners are the prisoners of the  
Court of Judge, Small Courts, Mandolabad  
for the recovery of sum of all rent as well as  
execution of respondents Nos. 2 to 4 in the  
allegations that the defendants being tenants  
of the shop in dispute in the rent of Rs. 700  
month had failed to pay the rent since 1973.  
1974 and thus committed default in the  
payment of rent and were liable to execution.  
The plaintiffs (prisoners) alleged that one  
Fazal Hussain was the tenant of the plaintiffs  
and Ahmad Hussain respondents No. 2 had no  
connection with the shop in dispute though it is  
stated that Ahmad Hussain alias was  
admitted to both of them. The defendants  
contended that one and Fazal Hussain alleged in  
his witness statement filed on 12.12.85 that  
Ahmad Hussain was for a joint tenant of the  
shop in dispute and thus the money served  
upon Fazal Hussain alone was invalid. In view  
of the allegations in the witness statement by  
an inmate, Ahmad Hussain was also  
impleaded in the suit as defendant No. 3. The  
trial Court decreed the suit on the ground  
that the concern occurred in Ahmad Hussain  
and only on Fazal Hussain, hence the suit for  
rent of money was not maintainable. The trial  
Court apparently was misled by the alleged  
misstatements in the notice by the inclusion of  
the name of Ahmad Hussain therein. The trial  
Court then recorded its finding that the notice  
was not served on defendant No. 3 Ahmad  
Hussain respondents No. 3. It is argued to the  
advantage of rent the trial Court came to the  
conclusion that in view of the deposit having  
been made under S. 70 of the 1967  
(Temporary) Content of Bail and Execution  
Act, 1967 (hereinafter called the Act) the  
notice was not a default in the payment of  
rent. In view of the findings that the notice

was illegal, as well as the court, was not a deficiency in the payment of rent, a housing loan deposited under § 10 of the Act, the case was dismissed. Aggravated by the judgment and order dated 19.11.1973 concerning the case of the past group, a request was presented to the Court of the District Judge Mosabek, which was transferred to the Court of the Additional District Judge Mosabek (respondent No. 1 for the deposit according to law). The respondent No. 1 states in the conclusion that the money would be demanded to have been served on Ahmad Hassan (plaintiff No. 1) independent of the fact that the deposit having been made under § 10 of the Act the defendant was a new defendant within the meaning of § 21.1 of the Act. The respondent No. 1 thus dismissed the request with the observation that in the case had been deposited in Court the plaintiff could withdraw it. It might be stated here that the respondent No. 1 committed a manifest error of law in holding that in view of the deposit having been made under § 10 of the Act the plaintiff could withdraw it. The regional Court failed to appreciate that the amount would not be withdrawn until the agreement as to who was entitled to receive the same was reached. Aggravated by the judgments and orders of respondents Nos. 2 and 3 the petitioners have filed the present petition under Art. 20b of the Commission.

3. The controversy is a narrow dispute would be to see whether the housing, independent in view of the deposit having been made under § 10 of the Act would be subject of their liability to payment. Lowest court for the parties have made their submissions in detail.

4. The petitioners had made a note dated 28-4-1969 of demand and equipment which came back with the demand, without. The request of refusal a dated 3-5-1969 and would state that the money of demand was served on Naze Husein on 7-5-1969. Further the right of deposit was denied by the petitioners as well as Sir, Bashara and Maria Jan. Half of the note concerning to Rs. 3/- was paid to the petitioners and the other half, namely Rs. 1/- to Sir, Bashara and Maria Jan. Consequently the passing of a persons decree of law No. 85 of 1969 the money being served to the three of the petitioners. The final petition

document was passed on 7-5-1969. In February 1969 Naze Husein and Ahmad Husein returned to 17b to Sir Basallah spontaneously. It is as far from the fact that the money order was illegally refused and the case was not accepted. After the lapse of a few months on 16-5-1969 Naze Husein and Ahmad Husein sent a request letter to the petitioner and also to Sir, Bashara and Maria Jan enquiring about the note due from them and also as to whom it should be paid in view of the non-acceptance of the note which was returned to Husein. After this note dated 16-5-1969 sent by Naze Husein and Ahmad Husein was duly replied by the petitioners through their counsel on 22-5-1969. However Sir, Bashara and Maria Jan did not reply to the note dated 16-5-1969. On behalf of the petitioners while replying to the note dated 16-5-1969 it was informed that the petitioners in view of a persons decree having been passed had become the sole owner of the shops in dispute. This reply further stated that the money of demand and equipment sent to behalf of the petitioners had been received back with the demand refused. On receiving such a reply instead of sending the letter to the petitioners to demand the money dated 28-4-1969 Naze Husein and Ahmad Husein filed an application under § 10 of the Act to the Court of District Judge Mosabek depositing Rs. 20/- on 7-6-1969. Dispute against the application under § 10 of the Act was filed by the petitioners. However the District Judge Mosabek allowed Naze Husein and Ahmad Husein to deposit the note in their own file without prejudice to the rights of the parties. It significantly emerges from the evidence on record that Naze Husein and Ahmad Husein were aware about the note dated 28-4-1969 and the date on which the remedy of refusal was made. However the note was deposited on the last day i.e. on 28-4-1969 when the stipulated period after the service of notice was expiring. Another significant fact which attracts attention is that in spite of the fact on dated 22-5-1969 was published the petitioner No. 1 Sir Basallah stating therein that she had become the sole owner of the shops in dispute and in view of the demand having been made in the note dated 28-4-1969 was was deposited on 28-4-1969 by Naze Husein and Ahmad Husein, No doubt Sir Bashara and Maria Jan had not replied to the note dated 16-5-1969 sent by Naze Husein and

Almal Hassan, but that there would be no credit to Naze Hassan and Almal Hassan to deposit the amount under S. 70CB of the Act when it was categorically informed on behalf of the petitioner that if the trial begins, the sole custody of the ship in dispute in case of the petitioner's death having been passed. Both the Courts below failed to consider that when the notice dated 25-4-1948 was served on Naze Hassan and P. V. Aditi Das demanding the sum, it was not permissible for the petitioners to have deposited the sum under S. 70CB of the Act. The petitioner No. 1 had clearly made the mistake to accept the sum. It would be necessary to set aside the portions of S. 70CB and S. 70CD as well as Section 70CD of the Act which are reproduced below:

70CB. Where a landlord refused to accept any rent lawfully paid or due by a tenant in respect of any accommodation, the tenant may, in the prescribed manner deposit such rent and continue to deposit any subsequent rent which becomes due in respect of such accommodation unless the landlord or the mortgagee upon his account writing intimates his willingness to accept:—

70CD. Where any bona fide dealer or depositor has acted as to the person who is entitled to receive any rent referred to in Section 70, in respect of any accommodation, the tenant may similarly deposit the rent during the circumstances under which such deposit is made and may, until such deposit has been removed or such deposit has been called by the direction of any competent Court, or by order made by such person, continue to deposit in like manner the sum due may subsequently become due in respect of such building.

70CE. In any case where a deposit has been made, as aforesaid, it shall be deemed that the sum has been duly paid to the owner or the landlord.

Both the Courts below have found that the notice dated 25-4-1948 was served on P. V. Aditi Das and Naze Hassan. However, both the Courts below failed to consider that it had not been served on Almal Hassan who was a joint tenant, but this finding was reversed by the High Court. In view of the law laid down by the Supreme Court in the case of *Khan v. Zahar* & *Tejwanti of the Part of Bombay*, AIR 1964 SC 464. The notice on the basis of the

above was considered to be valid. There is also no doubt that the notice was served on Naze Hassan on 25-4-1948.

3. In the case of *Ganga Ram v. San Phoban*, AIR 1970 SC 1236 (AIR 1970 SC 448) a Full Bench of the Court took the view that where a notice was sent to a tenant and some time later the mortgagee refused to take the possession of the premises, the mere continuance of the mortgage in the eye of law to partly the presumption of notice of mortgage to the mortgagee. The notice of demand dated 11-1-1967 was duly delivered on Naze Hassan on 15-1-1967. Having regard to the fact that the notice was served on 25-4-1948 it would be deemed that the contents of the notice and not the envelope alone were served on Naze Hassan. Such a view finds support in the observations made in the case of *Sun Park v. Sun. Insurance Co.*, AIR 1964 AIR 57. In this case Mr. Ramani, D. Singh made the following observations:

When a closed envelope is tendered to a person and he refuses to accept delivery of the same, he obviously has no knowledge of the contents of that envelope, but when he does not care to accept delivery of the envelope, the law should impute knowledge of the contents thereof to him, and the creditor then has no need to accept delivery of a registered or unregistered notice, a registered or unregistered notice is regarded as sufficient notice of the contents of the envelope to the mortgagee.

It would thus be deemed that Naze Hassan knew about the contents of the notice and it was not for the petitioners to have provided the same.

4. In the case of *Almal Hassan v. Zahar Ram*, AIR 1970 AIR 272 it was held as under:

It was not the duty of the landlord to prove that the tenant after having received notice had actually read it and understood its contents.

In both the cases, *Ganga Ram v. San Phoban* and *Almal Hassan v. Zahar Ram* (supra) notice of notice was by refusal.

7. In the case of *Mohammed-Khan v. Raj Chandra Khari*, AIR 1971 AIR 1130 (AIR 1971 AIR 441) Mr. Justice P. D. Gupta took a similar view with which I respectfully agree. It was held in this case as under:



that when he received a notice sent by registered post addressed to servant of the Addl. Secy. situated within of the compound of the house and not the one stage containing it and once it is held that in contents of the notice came within the knowledge of the appellant there is no escape from the conclusion that the appellant knew that the notice had been sent by the method requiring a demand of the rent of Rs. 4.

8. From the above discussion it is manifestly clear that "Nasir Hussain" who wrote about the contents of the notice dated 26-4-1960 wherein the rent was demanded being which he would be deemed to be a defendant outside marriage (5-3-1960) after the Act and liable to execution. Further the prosecution while relying to the notice dated 26-4-1960 on 22-7-1960 had correctly mentioned that "Nasir Hussain" was the sole owner and also specifically mentioning about the sending of the notice dated 26-4-1960 which came back with the endorsement "refused". Still Nasir Hussain chose to institute the payment of rent to Nasir Shamshad Begum, petitioner No. 1 by depositing the same under S. 7C(2) of the Act. The deposit of rent under S. 7C can be made only in two circumstances. Firstly, when a landlord refuses to accept rent lawfully paid to him by a tenant or in respect of his particular out to him as required in S. 7C(1) and secondly when any bona fide tenant or tenant has come as to the person who is entitled to receive any rent lawfully paid to him under (2) of S. 7C in respect of such accommodation. On depositing the rent under S. 7C(2) of the Act by Nasir Hussain the Municipal Municipal ordered that the appellant was permitted to deposit the rent at their own risk without prejudice to the right of the person. The respondents No. 1 submit however that in view of the deposit having been made on 24-7-1960 the notice dated 26-4-1960 by means of the notice of demand would be deemed to have been paid to the landlord in view of the provision contained in sub-section (4) of S. 7C. No doubt Nasir Hussain had received the rent through money order number 101578 dated 28-7-1960 which was a legally valid payment by petitioner No. 1 but the deposit under S. 7C was three months and thereafter the notice dated 26-4-1960 was not legally valid payment to accept the rent. However, there is nothing on record to show that the landlord ever refused to accept the

rent. Since the demand had been made, it clearly a prima facie case in favour of the landlord to accept the rent and a deposit under S. 7C of the Act therefore would not prove the intent. In the instant case the deposit had been made under S. 7C(2) of the Act and as such a consent be deemed that the payment had been made to the landlord within the provisions of S. 7C(2) of the Act. The demand was made in the name of Muhammad Hussain, Huj. Ghulam Rasul superior which, it was held that once a notice is served demanding the rent due had been sent it required the willingness of the landlord to accept the rent from the tenant. In the case of the instant matter of the two ingredients of section 7C which could entitle the tenant to make a deposit under the said section were present after date 12-1-1960 and the deposit made under the said section on July 21-1960 could not save the appellant from being declared as the person in default.

The notice of demand dated June 5-1961 served on the appellant on June 13-1961 was a notice in writing and specified the willingness of the landlord to accept rent from the tenant. In the case of the instant matter of the two ingredients of section 7C which could entitle the tenant to make a deposit under the said section were present after date 12-1-1960 and the deposit made under the said section on July 21-1960 could not save the appellant from being declared as the person in default.

9. In view of the discussions above both the Courts below materially erred in the application of law and committed a manifest error of law in giving judgment in the Court under Art. 226 of the Constitution and their orders are liable to be quashed. The cost of the petition is attributable to be deemed with costs throughout.

10. In discharge the parties are ordered to be jointly allowed with costs. The judgments and orders except 10-4-1974 and 19-1-1975 passed by respondents Nos. 1 and 2 respectively are quashed. The cost of the petition for recovery of arrears of rent and expenses of respondents Nos. 1 and 2 stands deemed withdrawn. The said respondents are however allowed and entitled to take leave only to receive the arrears of rent and deposit falling which they shall be liable to be served through the process of law.

Persons allowed,

1966 AIR 1, 1, 498

N 1314209A, 1

Ravi Prasad Ragoon. Appellant v. Mahadevi Lal Chag and others. Respondents.

Second Appeal No. 2113 of 1954. Or. 194-1954.

(A). Civil P.C. (14) of 1951, S. 100 — Finding of fact — Interference in second appeal — Courts holding that it was established by the case on behalf of one and it was in possession possession of real property — Finding of fact of fact, interference in second appeal is unwarranted. (Para 11, 20)

(B). U.P. (Temporary) Accommodations. Respondents/Appellants of 1951, S. 1 — Question of property — Effect — Trust being one against opposite party for reasons — Opposite party contending that property was requested by State — For issue there is to whether property was with State at the time of proceedings — Property though requested belongs to one and does not vest in State — Trust created in relation to one. AIR 1954 SC 446, 1954 AIR 111, 1, 498.

(Para 23, 25)

Cases Reported Chronological Para

AIR 1954 SC 446 20

AIR 1954 SC 302 1954 AIR 111 (SC) 275 20

1954 AIR 111 (SC) 275 20

AIR 1954 AIR 111 20

R. P. Tripathi and Ravi Prasad, for Petitioner Mahadevi Lal Chag and A. N. Verma, for Respondents.

**JUDGMENT** — This is a defendant's appeal directed against judgment rendered dated 25-7-1954 by Sri S. K. L. Kulkarni (former) and Additional District Judge, Kanpur who dismissed Civil Appeal No. 24 of 1953 with costs and affirmed the judgment and decree dated 15-12-1951 given by Sri J. M. Srivastava, the then learned Civil Judge, Kanpur on appeal from No. 28 of 1954 who had decreed the suit of plaintiff's respondents for possession over the disputed premises and for recovery of Rs. 1500/- in interest profits and for pendente lite and future interest profits at the rate of Rs. 50/- per month.

1. The dispute relates to a portion of premises No. 16-4, Mahadevi Chandra Bungalow, The Mohi, Kanpur as detailed in the list of

(the plan)

3. Plaintiffs were late Mahadevi Mahadevi Mahadevi Lal Chag in their capacity as trustees and managing trustee respectively of plan of No. 2 Late Chandra Lal Trust.

4. Concerning defendant is appellant Ravi Prasad Ragoon while defendant No. 1 was late Dev Datta Mahadevi and defendant No. 2 P. B. Agrawal was a pro forma defendant in one of the trustees of Mahadevi Lal Trust.

5. Plaintiffs case was that the entire premises No. 16-4 was commonly known as Chandra Lal Mahadevi Bungalow. It consisted of several residential units. The entire property originally belonged to late Chandra Lal Agrawal who created the Mahadevi Lal Trust under the will executed on 24-4-1917 and registered on 12-4-1917.

6. In the Mahadevi premises, late Koda is known as late Koda and the other as Chandra Koda.

7. It was expressly provided that Chandra Lal Mahadevi Bungalow was to be used by the general Hindu public as a Hindu Bungalow and the said two Koda may also be used for marriages and other important functions of the Hindu but no individual or group of individuals should be allowed to use or occupy a flat more than three days in a month. These Koda were not meant for letting out.

8. It was further stated that during the Second World War the Government ordered to order taking the Trustees of the trust to let out the late Koda on rent. It was alleged by late Mahadevi Mahadevi, the then Deputy Superintendent of Police and thereafter Sri D. B. Sharma, Chief Revenue Inspector subsequently defendant No. 1 late Dev Datta Mahadevi, a Member of the Legislative Assembly, because the reason of the trust late Koda on behalf of trust as a monthly rent of Rs. 50/- During the tenure of late Dev Datta Mahadevi, late Ravi Prasad Ragoon occupied the disputed premises as detailed in the list of all the plans. This occupation was done by him in 1934 through late Dev Datta Mahadevi. It was further alleged by plaintiffs that late Dev Datta Mahadevi Mahadevi has been in the year 1941 and late Koda Mahadevi, wife of late Chandra Lal Bungalow, who was then posted as Civil Judge, Kanpur got the portion, which was previously in the occupation of late Dev

Dasu Maan, allowed to her (sister) Bhawanee defendant No. 1 Ram Pyare continued to occupy the premises during the period.

9. Plaintiff requested defendant No. 1 to vacate the premises but on the request of Ram Pyare the possession occupation was allowed for a period of six months more or less until the marriage of his daughter. However, he did not vacate the premises as proposed by him, despite the marriage of his daughter in April, 1961 and thus the possession granted to him stood automatically revoked.

10. Plaintiff repeatedly asked defendant No. 1 to vacate the premises. They also served a notice dated 2-4-1964 upon Ram Pyare asking him to calling upon him to vacate and deliver possession of the accommodation. Ram Pyare gave an interim reply. He responded with another notice dated 12-4-1964 through his counsel asking him to vacate the premises and to pay certain profits at the rate of Rs. 20/- per month from 18-7-1964. On receipt of this notice defendant No. 1 Ram Pyare had a talk with the trustees and refused to pay rent and stated that the occupants should be treated as a tenant. However, plaintiff did not agree to it. Defendant No. 1 sought an order on 2-5-1964, for suit in writing stating in reply alleging that he was the proprietor and owner of the disputed accommodation. Hence, the present suit had been filed by plaintiff on 11-5-1964.

11. Defendant No. 1 Ram Pyare denied that he was in possession occupation of the disputed premises. He also denied that Dasu Dasu Maan was the owner of the estate housing known as Ram Kothi. According to him, Sri Dasu Dasu Maan occupied only a portion of Ram Kothi and the remaining portion of the Kothi was in possession of defendant No. 1 Ram Pyare in dispute to the occupation by Dasu Dasu Maan in Ram Kothi. He also denied that he occupied the premises in 1954. According to him, he was in possession from before. He also denied the allegations of plaintiff that he requested them to provide the occupation for so much he more under parent of the marriage of his daughter. He also challenged the right of plaintiff to seek the aid of the court for the disposal of Civil Appeal No. 228 of 1962 in the Court below the first. Other plea were the pleas which are not necessary to be decided for the disposal of the appeal.

12. Both the Courts below found that possession of defendant No. 1 was the disputed possession was permanent and not interim. They further found that possession of remaining defendant commenced in 1954 and before 1954. As the suit was filed in 1964, so there was no question of the suit being barred by law. They further found that, the suit was not barred by time, as they further held that Mukand Lal Gang was well-enabled to ascertain the fact. In the result, the claim was decreed as given above.

13. The appellate court found her parties as largely and proved the record.

14. On behalf of appellants, it was strenuously argued before us that possession of remaining defendant was not permanent but plaintiff it did not commence from 1954 but from before the 1-1-1954 when started the evidence and we reply hold that the possession of defendant No. 1 was simply permanent and commenced from 1954.

15. Both the Courts below have accepted the statements of Mukand Lal Gang (P.W. 2) and Ram Pyare (D.W. 1) and they accepted Ram Pyare as unreliable. In this connection, they referred to the striking statement of defendant No. 1 Ram Pyare, in his written statement, defendant No. 1 did not mention the date of commencement of his occupation in his statement under O. X, R. 2 Code of Civil Procedure. He declared that he occupied the premises in 1954 and subsequently through an endorsement in his written statement, it was pleaded that he occupied the premises from Sept. 1951. On the other hand, the case of the plaintiff on the point was consistent throughout. I find that the Courts below gave good reasons for believing the reliability of plaintiff Mukand Lal Gang (P.W. 2). Moreover there is nothing on record to show, the possession of defendant No. 1 was interim. He occupied the house and water taxes had subsequently the owner in Katpur told to pay all amounts of the obligation. He never paid any water charges including the water tax.

16. Defendant No. 1 Ram Pyare further contended in his cross-examination that he did not know the actual owner of the property. He again contended that the disputed accommodation belongs to Chhab Lal Trust and has stated that Dasu Dasu Maan Lal who was a trustee of the trust, when he

entered partnership over the disputed payment, for such an agreement to give the rent also William Lat (d. 1871) is mentioned (the other is either his wife or sister as dependent "see [ ] in [ ]"). A document approached from the [ ] when personal correspondence between the most of the marriage of his daughter was performed. This marriage was performed in April 1861.

**IF** So the intended consequence (ending of the debt) will bring us, indirectly and even more, enrichment.

14. The next contention was that there is no authority in law or equity to show that McCarty's Last Will was not legally executed inasmuch as all the aforesaid Trust and so the estate could not maintain the same.

29. Is a correct Venn diagram below for the  
any discrepancy or failure to show that the  
Mammals List is the false premise of the  
second? Then, list collected here or past  
here, see me.

36. Learned Courts below found the testimony of Mahabadi reliable on the point that in the first instance, he was misquoting the said property. Mahabadi Lal and others had filed a suit against a tenant Prasadram in respect of the house at Bhogal/Mohal claiming themselves to be successors of Chander Lal Taneja and the courts below rendered their judgments (first by an Appeal No. 101 of 1955 on the point that Mahabadi Lal and others were the trustees and had right to sue. It is correct that it has been held in *Gov. P.W. 37* that where the Plaintiff and others and Mahabadi Taneja Mahabadi and others under S. 32 of Code of Civil Procedure 1908 file an appeal of plaint copy of the written statement etc. and copy of judgment etc. All the Mahabadi Lal and others were not the appointed trustees and not date in the first instance from bringing an action in name of Trust for appointment of a trustee or trustee from the said property vide *Vikramsingh Das Mishra v. Shreeji Raju Bhatia*, 1956 All Wb (SC) 373, 148B 1956 SC 3623. Such desired condition or charge must be for the benefit of Trust. A similar view was held in *Lata Federal v. Bhatia* Nand All Wb All 445 related upon the Constitution. It was open to the Courts below to have believed the oral statement of P.W. 3 and to have discarded the statement of D.W. 1 for which no reasons were recorded by them.

have grown along rivers of all the plants etc. Under such circumstances the observed concentration of insects in the *Leucisphaera* cannot be linked.

3. Learned Submits his affidavit next asserting that P.M. 1 defendant had no involvement in the defendant's first 2 arrests he served World War two Koda was requested by the State for corruption in Depue. Superintendent of Police for the Michigan State and then for the Michigan State became the last arrest as the Koda in great excitement he accepted that a was never disappointed. On the basis of that statement through an affidavit dated 7-2-1973 defendant's affidavit sought an summary out in the affidavit that same old property in the defendant's possession by the State and the same was not returned to the plaintiff were not related to his and therefore the same again the defendant and the same was held to be dismissed. No real or documentary evidence was offered in support of the affidavit's defendant. The affidavit was signed by plaintiff's representative. It was also signed by by learned appellate Court by the judge and learned attention was made.

73. Learned Advisors for applicants argued that in a petition dated 10-4-1947 written by State Representative Dan A. Lee, capacity of Pinebluff affiliate Christianized Church, addressed to the District Magistrate, Kopper was a power that the property, he not allowed in any body that persons or also ministers of the first class that Kopper had been represented by the District Magistrate during the *First World War* and that the property was not made available to the sale and possession of the Kopper vessel in the time. In this connection reference was placed upon H.D. Voss v. State of Mississippi, reported in 43 F. 1084-10-1061 at p. 1077 which brought the distinction between the concepts of riparian and usufructuary in Indian law.

The two concepts, one of requirement and the other of equivalence in worldly distances of independence, Acquisition makes the comparison of the entire title of the superimposed level, whereas the nature and name of that title, for example, The entire bundle of rights which will vest in the original feeholder passes on acquisition to the acquiree leaving nothing in the doer. The concept of acquisition has an inner correspondence and, besides, so that there

consideration of the role of the original holder in the acquiring authority, for the concept of acquisition involves encroachment of domain or control over property without acquiring legal ownership and must be direct, subject to of temporary duration.

Thus, the Government cannot under the general acquisition concept for an indefinite period of time, in subsequent acquire the property, hence, this would be illegal under powers conferred on the Government."

23. A, not a clerk, a Hindu married woman, shall go to show that the title remains with the owner and does not vest in the State in the case of acquisition. In acquisition only possession of the property is taken for a limited period only. No case was shown in the pleadings as to whether the possession of the disputed property was with the State or not?

24. On the other hand, a portion of para 27 of the written statement of defendant Ravi Rajh shall go to show that after the vacation of the accommodation by defendant No. 2 in 1961 that person was shifted to East Kankar Kuman. So since Dns. More vacated the accommodation in 1967. Thus, it is shown that after the vacation of the premises by the East Midland Sharma, it was let out to ordinary tenants under the order of allotment. So Dns. More used to pay rent to the rate of Rs. 50/- per month. Therefore Ravi Rajh Kumar wife of Sri Chandra Shashi Singh produced an order of allotment which showed it is obvious that the respondents, if any, came to an end and the premises were let out to tenants under L. P. 1 (then Ravi Rajh) (Registered Land) Ravi Rajh, Dns. Ashli, 1972 (Act No. XIII of 1972) and other Acts which regulated the allotment and that the eviction of such premises. The distinction between regulation acquisition and acquisition was pointed out in *Mrs. Ragnam Devi v. Sankar Chander Singh*, reported in 1974 AIR 11 (1974) following is cited:—

"When a property is requisitioned by the Government it has the person in possession of the house is deprived of the actual physical possession, the actual use and the legal right which had vested him to remain in possession so that when the requisition order is withdrawn, it is only a temporary condition of possession to the

person from whom it was taken. But in the case of acquisition a right is acquired by the State and if the right, title or ownership vest in no longer needed it has to be legally transferred to someone else it is decided in part by right, title or interest. Further, it is shown that the rights of the owner or the person entitled to possession are protected and controlled by the acquiring authority. The State Government under requisitioning powers not the right to possession is a distinction that while in the case of acquisition in requisitioning the State has to give compensation for what the State has acquired, in the case of regulation, all house accommodation is requisitioned as possible already houses, no rights in the property are acquired or possessed under State.

25. In the property matters as being under Trust and the plaintiff was, with mutual consent between Laxmi Devi and applicant. Court rightly rejected the statement of applicant dated 7/2/77 moved in defendant's application.

26. In the result, the appeal is dismissed with costs, impugned judgments and decrees are affirmed.

Appeal dismissed

1998 ALL. L.J. 494

R. M. SARMA, J.

*Smt. Ravi Rajh, Plaintiff v. P.F. Ashli and Sonages Judge Karpur and another Defendants.*

Writ Petn. No. 1084 of 1992 (D. 26-6-1992).

*P. F. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (11 of 1972), S. 10(1)(a) (Power) 3 sub-cl. (ii) — Nature of premises — For under (1), (ii) — Attached only if entire residential building is sought to be converted to business use — Domestic purposes not — Not applicable.*

The husband and his husband were in medical profession. After retirement of his husband the husband moved an application u/s. 13 (1)(a) for release of the disputed premises since they intended to use their part of the

EC/EC-G204/90/AN/217

made in the deposited petition. It was submitted that the person available to them was not sufficient for comfortable living and carrying on medical practice. Lower Court recorded a finding in favour of petitioner in comparison building. However the appellate authority instead the application because of sub-house let off third person at 5.31 According to him as petitioner had applied for the release of the building for residence and for carrying on the profession of medicine it was contrary to sub-d 1(a).

And that the appellate authority committed an error of law in rejecting the application. Dependence on the case of any residential building for occupation for business purposes occurring in sub-d 1(a) of third person to 5.31 obviously carries out an exception and provides right conferred on sub-d 1(a). It is his, therefore, misinterpreted finding. The law created by the sub clause is against conversion of a residential building into business purposes. It does not even remotely suggest that an application for release of residential building for both residence and business purposes is not maintainable. In other words the law is only in those limited cases where a residential building is needed for business purposes. And rightly so. Because has been decided by 11 Jh in many professions, trade or calling. Teachers, Doctors, Lawyers, Chartered Accountants, Charities etc. are covered now. It is wrong, knowledge that currently such professionals as are given entry to their private practice transfer houses which are small. One can be said that use of the words of the section or from surrounding circumstances is very precise the Legislature intended to exclude a residential building for residential use. Building both for residential and business purposes. In various business building or in part or whole building has been used but the Legislature significantly restricted use of any such word. The construction therefore is unambiguous that the applicant after building intends to convert the entire residential building for business purpose. (Para 1)

Held further that the use of domestic purpose may not be needed in a local law application. For example in the very case petitioner live in other house. She and her husband have moved from service. But they being professional need not only to live but

carry on their medical profession as well, could their be more genuine application. Even if the petitioner's husband had been a small case neither would have applied to live in a small portion and thereby the remaining part may portion for professional use. The application could not be dismissed. It is not the size of major or minor portion of the house for professional use which should be the sole right for allowing of the application. Was for by the proviso. 1978 AILJ 1228 and 1979 1 Raj C 171 (AIR) Not on. (Para 2)

#### Case Related Chronological Para

1978 1 AIR Raj C 306 - 1978 AIR C 144 2  
1978 AILJ 1206 - 1978 1 AIR Raj C 11 - AIR  
1978 50 (174) -  
1979 1 Raj C 272 - 1978 AIR Raj C 407  
1978 AIR L 1208 - 1979 1 Raj C 25 - 2

H. S. Nagar, for Petitioner & R. Dabey  
for Respondent

**ORDER** - In this appeal against the questions that arise for consideration, are ready at law. Admittedly petitioner and her husband were at medical profession. They moved from service apartments in 1978 and 1973 respectively. After retirement of husband petitioner moved an application on 1978 and 1979 at U. P. Act 33A of 1972 for release of the vacant portion. Even claimed that her husband has signed the official order on 12th July 1977 but he has been prevented to release possession of only one room with permission of his successor to office all such time he made arrangements for getting his own house vacated. According to the applicant petitioner and her husband moved to establish a hospital the only place where the applicant owned a house and in both of them were in good health they intended to start their practice and reside in the premises in dispute. Accordingly in her they needed separate provision for the purposes of convenience and maintenance of persons and adequate accommodation for residence building in their house. On the day when the application was made the petitioner was in possession of Dabey house having a room and two small rooms with garage and main entrance and kitchen and both were separately and highly secure. The applicant was not aware of the house who were in occupation of the house. All the

respond except against party named the premises during pendency of the application. Consequently, the application was extended under Order VI R. 17 that the Civil Procedure Code. In the undersigned application it was stated that the person occupied by other means had been occupied and was available to the applicant but it was not sufficient for comfortable living and carrying on medical practice. The opposite party who is also a Chartered Accountant contested the claim and alleged that the house at dispute was not needed for the petitioner or her husband as they were residing with their own children. It was also claimed that they did not intend to set up any medical practice nor it was profitable for them to start a new surgery at Kingston. It was also alleged that opposite party had been carrying on her profession as the petitioner in dispute during long time and he had built up a practice and will be put to great inconvenience if he was asked to leave the state. The presiding authority found that considering state of the petitioner and her husband and their necessary accommodation which had come only three persons as a result of divorce by various means was insufficient. It was also observed that from report of the Commissioner and evidence submitted it was established that she and her husband had furnished them in front portion of the disputed house vacant by some means. It emphasized their case that they intended to start practice and needed the accommodation at dispute. Consequently it was held that need of petitioner was bona fide. On comparison building also the finding was reported in favour of petitioner. It was held that opposite party had acquired a house in Higher Income Group from Kingston Development Authority. He did not believe the state of opposite party that he had transferred the state to wife Y. K. Ching. Accordingly it was held that intention otherwise of it was that it did not in any way affect the application filed on behalf of petitioner. The presiding authority therefore held that the study building at the premises was genuine. In appeal the order was set aside since as a matter of law there is no consideration of material on record on subject of bona fide need or comparative building. The appellate authority found the application was correct was liable to be rejected because of sub-clause (b) of third proviso of S. 21. According to law as

petitioner had applied for the release of the building for residential and for carrying on the profession of medicine it was necessary to sub-clause (a). It was also observed that originally that a major portion of the accommodation was required for petitioner for business purpose and the accommodation which had come after her possession being sufficient for the requirement the application was liable to be dismissed.

2. In order to appreciate the correctness of view expressed by appellate authority on sub-clause (a) it is corrected below.

3. In the case of any residential building for occupation for business purposes

It obviously carries out an industrial and commercial right consideration building, it of the Act. It has therefore to be construed strictly. Nothing should be added to it to enlarge its scope. Its construction should be restricted to what immediately conveyed from the words used by it. Keeping these principles in mind one immediately notes that the law required in the sub-clause is apparent construction of a residential building for business purposes. It does not even remotely suggest that an application for release of residential building for both residential and business purposes is not unreasonable. In other words that too is those licensed everywhere residential building is needed for business purposes. And rightly so. Because has been submitted by R. 2(a) as these provisions, made no calling. Therefore Doctors, Lawyers, Chartered Accountants, Consultants, etc. covered in it. In common knowledge that normally such professions are carried on day-to-day on day proper premises from the house in which they reside. Can it be said from any of the words of the sentence that professions are carried on or on any principle that Legislature intended to include as a case if the application was for release of a building both for residential and business purposes, for various reasons building or premises which building has been used for the Legislature significantly created not of any such word. The conclusion, therefore, is unarguable that the applicability of the limited criteria to convert the entire residential building for business purposes. It is argued that business purpose of petitioner being the business purpose the premises was applicable. This must has no doubt observed in R. 2(b) & 2(c).

*Joels v. R. Adult, District Judge* (1998) 2 All Best Case 204. That while considering whether the law under C.I. 102 of the first person applies or not the court must take into account the fact that the court is considering what is at the dispute pages which determine the nature of the building. This court has developed a new way to deal with the dispute. For instance, why any man can be a patient for release. But the court of domestic purpose may not be needed in a home care application. For instance, in that case the person has no father home. The mother had not been visited from her home. But they being professional need not only to be but also to be a professional as well. Could there be a more present application. Even if the person's house would have been a small one and he would have spent it as a small person and devote the remaining part of the person. But professional are the application could not be done-out. It is not the use of space in their person of the house for professional services should be the case with for deciding if the application was to be by the person. In *Cheng Lai v. Adult District Judge* (1998) 1 New CI 20. (1998) All LJ 228. It was held for the Court that where a person requests a house for residence as well as for his office the application could not be denied due to being not for business purposes. The same case was taken in R. J. Kuopu v. R. Adult Dist. Judge (1998) 1 New CI 275. The appellate authority therefore concluded as correct in not denying the application as stated by sub-clause (a) of the first proviso.

3. For the person it was argued that if the application was not barred by sub-clause (a) of the first proviso then the application of the person would be considered. According to him the opposite party having acquired a house he could not consider the application filed by person as not admissible. (i) of the Exemption which was in order. —

12. When the issue is any member of the family (a) he has been actually residing with or is wholly dependent on him; has built or has otherwise acquired or been situated or has got situated after acquisition a residential building in the manner; accordingly stated with or there was, no objection by the court upon an application under the sub-clause shall be maintained."

According to opposite party he did not have

any house in the possession which could extend the application after exemption. It is held in the judgment made in his behalf before the court as follows. According to him as he had mentioned the person in favour of one T. R. Ching he was not the owner and therefore he could not be considered to be a person who has acquired any vacant accommodation. The argument is without substance. It is admitted in the affidavit and the application filed on behalf of opposite party that he had applied for a house as a Higher Income Group which was allowed to him in Kuopu by Kuopu Development Authority. It is stated that finally when the allowance was made he could not pay the consideration to the Kuopu Development Authority and therefore he approached to Ching and deposited the amount on his behalf. It is very difficult to accept the statement was submitted that he deposited the consideration with Kuopu Development Authority and the authority issued receipt in his name and the certificate for delivery of possession was also issued in name of opposite party. The President Authority was justified in holding that it was only an amount. Learned counsel for opposite party argued that in Ching has filed affidavit in the Court. It may be so but the circumstances speak for themselves. It is clear that the house was purchased by opposite party and he is owner of it. The claim of transfer in favour of Sh Ching is not substantiated. The appellate authority had also not set aside the finding.

4. Learned counsel for opposite party argued that even if Exemption applied it could not automatically result in allowing of the application for release. The person had not to satisfy the basic requirements of S. 24(3)(a) that a law must be bona fide. And according to him as opposite authority had held the need of person was not bona fide and that being a finding of fact however shaky, the application was liable to be dismissed. The submission is devoid of any merit. The appellate authority, having erroneously decided the question of law claimed in that context that need of person was not bona fide. The finding is wrong because it is not based on material on record. It was in a risk of law versus fact-finding but in the present, as that could neither take into account the finding is based on erroneous consideration. Then the





Appeals can be denied only after offering opportunity of being heard to the parties concerned i.e. themselves. Once the hearing to the other side is a mere showing obviously in such instances, no opportunity to lead evidence. Further if even in no particular manner the court also opportunity of filing and leading evidence has to be granted.

(Para 10-11)

#### Cases Related Consolidation Cases

1978 A2 WC 118	1979 CAJG LR 4874	3
1978 Scr. Rev. 147		8
AIR 1982 SC 958		4
AIR 1982 AB 487		9
AIR 1982 SC 102		10
(1981) LR 40P 784	1977 AIR 1740	105
Toner v. Miskoon		5
(1984) 75 E.F. 408	(1984) 2 Cr. Rev. 96	
Thirunagpal v. Cole		2

J. K. Saxena and T. P. Singh for Petitioner Sakshita Rao and Standing Counsel for Respondent

\* **ORDER.** — The writ petition is denied against the order dt. 11th Aug. 1978 passed by Subordinate Judge, Deputy Director of Consolidation, Jaipur. The order dt. 28th Dec. 1970 passed by the Assistant Settlement Officer (Consolidation) and the order dt. 25th Jan. 1968 passed by the Assistant Consolidation Officer as a proceeding under S. 5A(1) of the U. P. Consolidation of Holdings Act (the short title of the Act).

2. The facts of the case are in a very concise manner. A consolidation in respect of the plot was commenced between the parties and the rule was passed by the Assistant Consolidation Officer on 28th Jan. 1968. The petitioner preferred an appeal challenging the consolidation mainly on the ground that she did not receive any notice and no opportunity of filing the objection. There was some delay in filing the appeal which was condoned and thereafter the Assistant Settlement Officer (Consolidation) denied the writ of certiorari holding that the rights of the parties are barred and he refused the nature of the consequences of the plot which were inevitable. In this connection, an appeal or opportunity was given to the petitioner as to the continuing respondents to lead evidence. The removal of the petitioner before the

Deputy Director of Consolidation also was the same fact.

3. The learned counsel for the petitioner urged that as per the Assistant Settlement Officer Consolidation has accepted a finding on the merits of the case that the petitioner cannot get any right in the land in dispute as she has got the nature of the subject or other plots a show pending an opportunity either to the petitioner or to the continuing respondents to lead evidence. An objection about the fact has been made by the Deputy Director of Consolidation. An appeal arising from the order of consolidation under S. 5A(1) of the Act cannot be denied on merits at the time making reference to evidence which is before opportunity to lead evidence was given to either of the parties.

4. On this material, the learned counsel appearing for the continuing respondents has urged that in respect of the consolidation the allegations were made about the fact and the nature of consolidation were also challenged. In this case it shall be a case of credible documents and the civil Court shall adjudicate on the merits of the controversy and not the Consolidation Authority. According to learned counsel the appeal petition by the petitioner was not maintainable as she should have filed a civil suit. The placed reliance on *Shanpal v. Saxi Lakshmi*, 1978 A2 WC 104. But that was a case in respect of the suit filed in Civil Court for cancellation of the title deed and consequently was about void or voidable nature of documents and in the meanwhile the consolidation operation had commenced. The question arose as to whether a suit for cancellation of title deed can be started under S. 10(b) of the Act. On this issue a remark by this Court that the nullity cancellation of the title deed which was voidable in nature would arise under S. 10(b) of the Act. But that analogy cannot be borrowed in the present case which operates in order under S. 5A(1) of the Act the appeal has been provided under S. 11 of the Act.

5. In *Shanpal v. Saxi Lakshmi* (supra) it was observed on page 127 as follows:—

If however a party has been misled into executing a deed or signing a document, manifestly different which he intended to execute or sign, he can state the plot known as English Lane as the plot of his

ent factors. In none of the cases in which the plea of non est has been successfully pleaded, the material has been reduced by force.<sup>12</sup>

Further in the case of *Shreeal Dasgupta* reference has been made to Clary, an eminent Treaty Fourth edition page 116 and in this connection the doctrine, namely, in *Shreeal Dasgupta v. Coln* (1947) 66 AIR 466 in which it was held that a deed executed by an illiterate person does not bind him if read falsely either by the person or a stranger. Further *Shreeal Dasgupta* case again was considered in *Prasad v. Madhwaraj* (1961) LR 4 CP 100 and the other cases mentioned follow:—

"A marriage, or a simple and sole death, that, if a blind man or a mute who cannot read or who has some reason not implying negligence, requires to read has a written instrument falsely read over to him, the matter amounting to such degree that the written contract is of a nature altogether different from the contract pretended to be read from the paper which the blind or illiterate man afterwards signs, then at least it does, in negligence, the signature is deemed to be a forgery. And it is so held on much on the ground of fraud, where it will occur, but on the ground that the deed of the signer did not accompany the signature another would that he never intended to sign and therefore is contemplation of law never did sign. The contract in which his name is appended"

6. The relevant observation was cited upon in *Nagendra v. Shreeal Dasgupta* (Madras AIR 1960 SC 506). It is also observed that at the instant case also the petitioner alleged in an affidavit that the paper that she never intended to execute plea of *Koran No. 18* and it was fraudulently inserted in the translation. In this way it is clear that the letter intended to sign it and such a document cannot bind her.

7. In view of the admitted discrepancy it is clear that in the present case before us, the petitioner was misled into executing a deed of commitment on signing or joining her thumb impressions on a document fraudulently delivered to her that she intended to execute or sign and she could very successfully now plea of non est has been and it is observed that her mind did not accompany the signature or thumb

impressions and that she never intended to sign or put thumb impressions on the translation in which her name was appended. In this way there was no legal existence of such a deed, signed and the doctrine of non est has been successfully proved. I am, therefore, of the opinion that the case of *Shreeal Dasgupta v. Coln* (1947) 66 AIR 466 will apply to the present case. I hereby dismiss the petition with costs.

8. Considered the foregoing respondent evidence was placed on "Koran No. 18". The Director of Consolidation (P.W. No. 100 of 1976) in this case the facts were that the Deputy Director of Consolidation had divided the revenue and thereafter an agreement was entered in the form of a deed, but the order passed by the Deputy Director of Consolidation was precisely the form of bond and in this reference it was held that the petition for the applicant's relief failed for want of proof under the facts on the ground of fraud, but in the instant case the facts are entirely different and against the order passed by the Assistant Commissioner Officer on the basis of the Commission arrived at, however, the petitioner appears to identify the persons under S. 11 of the Act and the genuineness of the papers including the allegation that no commitment was arrived at or the bond was concerned could also be gone into by the appellate authority. This case is also not distinguishable.

9. No course different has been shown by the respondent respondents denying the allegations made in paragraph 11 of the petition that no opportunity was given by Assistant Sessions Officer (Consolidation) to lead evidence. It is well settled that any counter-asserted allegation cannot be discredited unless there are other relevant factors in it. (See *Agga Lal Bania* (1961) 1 S.C. 304 (AIR 1961 SC 407)).

10. Further under the S. P. Consolidation of Holdings Act a clear provision has been made under S. 11 that appeal would be against the order under S. 5A including an order passed in consolidation proceedings. Such appeal can be decided after affording opportunity of being heard to the person concerned in the matter since the unconcerned affairs of all the persons was



was issued on 6/7/1990 which was allowed by the Consolidation Officer through his order dated 13/6/1990 and the interim order was confirmed by the respondent on 17/7/1990. Against the provisions have approached the Court under Article 226 of the Constitution.

3. The learned counsel for the petitioner has submitted before me that clear of the consolidation operations regarding the village where the disputed land remains had taken place on 10/11/1990 thereafter the consolidation officer has no jurisdiction to allow the restoration application moved by the contesting opposite party. The respondent now has already acted in confirming the order.

4. The learned counsel for the contesting opposite party has tried to refuse the writs issued on behalf of the petitioner. My attention has been drawn to the ruling reported in 1940 Ban Ben 307 *Ban Ben Ram v. D.C. Director of Consolidation, Banks* where a learned single Judge of the Court has indicated that even after the consolidation a restoration application can be filed with an application for condonation of delay under 3/3 of the Land Revenue Act.

5. In AIR 1975 All 403 *Bhawan Singh v. Govt. Punjab* a Division Bench of the Court has indicated that rule paragraph 7.

The intention that there is no basic difference between the appellate and the revisional powers. If under a statute a party has a right to approach the appellate Court with a prayer to revise the order of the subordinate Court, the proceeding can be said to be pending till the right to exercise through it approaching the superior Court subsists in the applicant and so long that right subsists, a petition to set aside the proceedings need finally come to an end. The right to approach the Superior Court through an appeal or a revision can be exercised only after an adverse judgment or order is passed against the party. Till then the right only remains dormant and when that right is exercised, the original proceedings become pending."

6. In AIR 1973 All 141 *Ram Bahadur v.*

D. C. another Bench of the Court has indicated that the principle enunciated in the ruling reported supra, is applicable to an application for setting aside an order made under Section 46 of the L. P. C. B. Act under the provisions of Chapter IX and X of the L. P. Land Revenue Act applicable to all proceedings under the Consolidation of Holdings Act, Sections 266 and 267 of the L. P. Land Revenue Act are in Chapter IX, Section 266 provides that whereas on an party to such proceeding objects to stand on the day specified in the summons or returns due to which the case may have been presented the Court may dismiss the case for default or may issue and determine it in person. Section 267 says that no appeal shall be taken an order passed under 3/300 in person or in default. This Section provides no inhibiting impact of good cause for non appearance. (See paragraph 3 of the Ruling)

7. In view of the above circumstances of the Division Bench of the Court, I find to agree to the submission of the learned counsel for the petitioner that the consolidation officer had no jurisdiction to remove the objection demanded in default. It is well known that where there is a reasonable opportunity for hearing a party against, the Court is left with to interfere with the order of the subordinate authorities in the exercise of its power under Art. 226 of the Constitution.

8. In the event, the writ petition fails and is dismissed. There would be an order as to costs.

9. Both the parties have been heard at the instance made and the claim of the parties have been decided on merits in accordance with the principle contained in 2nd Proviso to Rule 3 of Chapter XXII of the Attached High Court Rules, 1952.

Person demanded



Minimize the operation-side disruption of the results of the upgrade will remain suspended at 20th August 2010.

[illegible]

¶ I have heard the board counsel for the parent and pursued the affidavit along with numerous exchanges between the parties.

30 The main point for determination is the appeal as to whether or not legally permissible to put a temporary suspension of the money weight loss by the applicant as one of the purposes of (1) 39 R. 3 (1) Purpose of (1) R. 3

11 The relevant provision is that no  
 12 injunction can be granted to restrain any  
 13 person

12 In view of the documents in 9 P. Proceedings v. Rosenberg/Office Generalist, AIR 1931 SC 94 and A. Aggravation P. See Kontar. AIR 1967 AC 414. For 200, as can hardly be disputed that the word *circumstances* will mean the entire process of *circumstances* etc.

translating being institutionalized. The process continues with the submission of reports and into a declaration of credit. The thing of economic papers, minutes, meetings and the policy and administrative state.

Ed. The last instrument for the appeal submitted that Prosser's provision that no requirement that the grantor suffer the, or real management of any subsequent restriction, including a Lienholder, or a Successor. He submitted Prosser's may not apply in the present case strictly, but the provisions are similar to the provisions of previous cases. He placed reliance on the case of *Mahabadi Singh v. J. J. Smith* District Judge, Montreal 1914. (L.R.B.D. 1914) L.R.B.D. 1914. It was based on the case of —

In the instant case no dispute has been brought against the whole competence of management on the ground that one of its members has become disqualified to hold office. The question has been sought to be agitated by a person who has ceased to be a member because he has incurred a disqualification and even on whose pendency to hold office the management of the college can smoothly go on as one of its full-time staff of the library which provide for such a contingency. And on which evidence has not been placed in the impugned order. For the reasons mentioned I am of opinion that Q. 1 is not the answer to Sub-rule 15 B. 2 of O. XXVIII of the C. P. C. as amended by G. P. Act IV of 1938, and not be restricted to the facts of the instant case."

14. The record created by the appellants substantiated that the respondents Nos. 1 to 10 and respondent No. 11 (total of twelve respondents) for election to the constituent body of the Executive Committee of respondents No. 1, used in the name of the manner of an association is granted, did not attend any conference or meeting of the constituent association. He contended that the respondents Nos. 1 to 10 were mere outsiders and not even ordinary members of respondents No. 1 and that they could not participate in the election. Release was placed on the English copy of the documents submitted by respondents No. 1 in the office, all the plaintiff's witnesses.

15. The learned counsel for respondents Nos. 4 to 10 claim no intention to S. & P. off any of the Trade Unions for a minimum

that a trade union shall not be entitled to representation under the Act unless the members of such union are constituted in accordance with the provisions of this Act and the rules thereof provided for the following matter:—

(a) the admission of ordinary members who shall be persons actually employed or engaged in an industry with which the trade union is concerned; and otherwise admission of the members of husbandry or temporary members is either authorised under S 12 to constitute executives of the Trade Union.

“No person can vote who does not S 12 of the Trade Union Act which provides as follows:—

12. Persons must be eligible to be connected with the industry.—(1) Not less than one-half of the total members of the office bearers of every registered union shall be persons actually engaged in employment in an industry with which the Trade Union is concerned.

Provided that the appropriate Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order.

14. Licensed counsel for the appellants submitted that the respondents for 1 does not provide for number to become members of the Executive Committee.

17. As I am concerned with a limited question as to whether (b) under (a) submission above applies to the present case, I do not find it necessary to go into other matters. The bar set up in *Pranab* is a shield and is not imposed by the respondent against one by the appellant for the appellant. Whether respondent Nos. 4 & 5 have entitled to contest election or not is wholly irrelevant to the question as to whether the Court can grant a separation restraining any election. The bar only puts an embargo on the power of a Court to grant an injunction restraining any election. It does not operate in the way of the parties in challenging the legality or validity of the election in accordance with law. Simply because persons who are disqualified are participating in the election, the Court cannot have a right to annul or set aside the election. The

policy of the legislation appears to be that the election should be held, unimpeded by, any intervention of Courts of law and the validity of the election should be considered as a bare matter in accordance with law. I am unable to accept that the provisions of *Pranab* (a) and *Pranab* (b) are analogous to each other. The case of *Manjit Singh v. The 1st Adm. Officer, Judge, District P.W.D. 403 P.W.D. 404, 405, 406, 407* (supra) provides no guidance on the point in issue. I hold that the *Pranab* (a) applies and an temporary separation may be granted to restrain the election. The respondents rightly insisted the application for temporary separation.

18. The appeal is allowed and the interim order dated 26th August 1980 is vacated.

19. The learned counsel for the appellants made an oral prayer for permission to file a Special Leave Petition before the Supreme Court. I am not satisfied that this case raises any substantial question of law of general importance which needs to be referred to the Supreme Court. The oral prayer is refused.

20. A copy of the order may be issued to the parties on payment of usual charges only.

Appeal allowed.

HHB ALL L.J. 402  
S D AGARWAL J.

Rama Kumar, Petitioner v. Daljit Singh, Dhillon & Associates Judges: Bhandari and others, Respondents.

Civil Misc. Writ No. 24 of 1977 (Dr. B. B. Bhandari).

U.P. Publics' Freedom (Restoration of Government Occupied) Act (20 of 1975), Sec. 5, 6, 17(1) — Appeal — Maintainability — Petitioner's arbitrary refusal to make order for election — Appeal against — Maintainable. (Para 18)

Barings Appeal, for Petitioner, Teaching Council, for Respondents.

ORDER — This is a petition under Article 226 of the Constitution.

LC/ADP/GRH/PS/VED/TPV





of other co-accused does not seem to call  
(para. 10)

Cross Reference Chronological Table  
A.B. 1949 SC 911 4 2

S. N. Singh Chaudhary for Petitioner  
Srinivas Choudhary for Respondents

**ORDER.** — The present was put on under Art. 226 of the Constitution of India as directed against the order of 1949 passed by the District Officer, Muzaffargarh (the order dt. 20-7-52) passed by the Additional Commissioner and the order dt. 26-7-52 passed by the District Revenue Officer under S. 226B of the L. P. Puneriwa Abolition and Land Reforms Act (the order referred to as the April Order), against the Nos. 4 and 5 charging certificates and certificate/affidavits respectively filed there before. Since U. Singh was the father of U. Singh, who was the common ancestor of the parties and who had acquired the plots in dispute and his other two sons, namely, Karam and the father of the petitioners and the third son, Ghada, had died leaving behind his widow, her, daughters. After the death of the father the share of respondent Nos. 4 and 5 and that of the petitioners between 1-3 and 1-3. But in the revenue papers the names of respondent Nos. 4 and 5 did not appear and the petitioners were denying the title of respondent Nos. 4 and 5. Hence the necessity for filing the two suits.

2. The suit was dismissed by the petitioner alleging that respondent Nos. 4 and 5 were not the co-tenants nor co-owners of the plots and that U. Singh, father of respondent Nos. 4 and 5 was not the son of U. Singh, the common ancestor, and hence respondent Nos. 4 and 5 cannot inherit the plots and her they were tenants nor they were co-owners.

3. The trial Court dismissed the suit alleging that U. Singh, father of respondent Nos. 4 and 5 was the son of U. Singh, their father, but the trial Court and the District Officer believed the oral evidence and believed respondent Nos. 4 and 5 were the co-tenants in the extent of 1/2 share hence the suit was dismissed. The petitioners preferred an appeal before the Commissioner which was dismissed and the Second Appeal filed by them also was the same fate.

4. I have found the learned counsel for

the petitioners. The learned counsel for the petitioners urged that the oral evidence in behalf of respondent Nos. 4 and 5 has been reasonably relied upon, inasmuch as the percentage of respondent Nos. 4 and 5 was to be given off and this could have been proved only by looking evidence of such persons who could have special means of knowledge about the family and relationship of the parties and the opinion expressed by the trial court as to the existence of relationship of any person was sufficient. According to the learned counsel for the petitioners owing though respondent Nos. 4 and 5 were children of U. Singh, namely, Karam, Mohd. Karam and Abdul Karam, who were their father, plaintiffs are sons of U. Singh also (U. Singh) who was the son of U. Singh. The statement of P. W. 2 (Mohammad Karam) was doubted on the ground that he has not given the source of knowledge about the fact he was denying, whereas the statement of Abdul Karam was relied upon as he has stated that he has seen U. Singh (U. Singh) namely father of respondent Nos. 4 and 5 and their grandfather. The learned counsel for the petitioners placed reliance on *Dolgobinda Parashar v. Patel Chander Vard.* A.L.J. 1950 SC 744.

5. The case of *Dolgobinda Parashar v. Patel Chander Vard* (supra) indicates the principles for applying the provisions of Ss. 56 and 61 of the Indian Evidence Act, 1973 as to how the relationship can be proved and how far the statements of witness could be relevant. Since if the statements could be relevant, what would be the scope of the statement made. The observations made by the Supreme Court in para 147 para 4 is quoted below:—

It stands in affirm that when the court has to form an opinion as to the relationship of one person to another the opinion expressed by conduct as to the existence of such relationship of any person who has special means of knowledge as to the subject of the relationship is a relevant fact. The two classes were appointed to the reason clearly being that the true scope and effect of the section. It appears to us that the essential requirements of the section are (1) to ascertain the case where the court has to form an opinion as to the relationship of one person to another. (2) in such a case the opinion expressed by conduct as to the existence of such relationship is a relevant fact. (3) but the

person whose opinion is expressed by another respondent must be a person whose a member in the family or otherwise has special means of knowledge as to the particular subject of relationship and the opinion must be expressed by him either continuously during the whole part of the tenure. If the person holds this condition, then what is relevant is his opinion expressed by himself. Opinion means something more than mere relating of group or otherwise. It must judgments be held that as a belief or a conviction resulting from what one knows on a particular question. Now the belief or conviction may manifest itself in conduct or behaviour which releases the emotion of belief or opinion. What the section says either such conduct or outward behaviour is evidence of the opinion held a relevant and may therefore be proved."

6. In view of the aforesaid observations made by the Supreme Court one clear fact the person whose opinion is expressed by another must have special means of knowledge about relationship and the opinion must be expressed by him himself. The opinion expressed by another certainly means something more than mere relating of group. In the instant case P W 3 has stated that he was residing very close to the house of respondents Nos. 4 and 5 and he has seen Mst. Usha & Mst. L. Bai and his father Balu. The witness was aged about 30 years and he resides per in the third house from the house of the grandfather of respondents Nos. 4 and 5. Under these circumstances it cannot be said that he has got no special means of knowledge. Even in the cross examination it was not suggested that he was deposing voluntarily or that he has no special means of knowledge nor it was suggested that what he was deposing was a put group or that he was not reliable witness. Under these circumstances from the answers of P W 3 coupled with the answers of P W 1 it can be said that he fulfilled the conditions as set out under Sec. 30 of the Indian Evidence Act.

7. Apart from the answers of P Ws. 1 and 3 there were other circumstances and evidence by which relation has been proved. The witness has been placed in Khanna of 1441 P where the plaintiffs were recorded as co-owners along with Mr. Sundera, widow of Khadi Bai. In view of these facts a number

of circumstances have been considered to answer the question that respondents Nos. 4 and 5 were the sons of Mst. L. Bai, who was the wife of Balu, who was grandfather of the plaintiffs, who has occupied the plots.

8. Further whether the plaintiffs were the sons of Mst. Usha and their father was the wife of Balu, an opinion of fact and all the Courts before including the trial Court Additional Commissioner and the Board of Revenue have held that the plaintiffs were the sons of Mst. Usha, whereas the wife of Balu, the common ancestor. Even the plaintiffs father was recorded as co-owner along with Mr. Sundera, widow of Khadi Bai.

9. In view of the documents made above it is clear that the plaintiffs have correctly been held to be the sons of Mst. Usha, who was the wife of Balu.

10. The learned counsel for the petitioner has further urged that the respondents who, in dispute a possession before the rights of respondents Nos. 4 and 5 came to an end as they remained out of possession for more than the prescribed period. The argument of the learned counsel for the petitioner proceeds on an erroneous assumption of fact, in the instant case respondents Nos. 4 and 5 were claiming to be co-owners along with respondents Nos. 1 and 3 and the possession of one co-owner is the possession of all. When a plot of money was set up and proved a cannot be said that the rights of respondents Nos. 4 and 5 came to an end. I do not find any merit in the submissions made by the learned counsel for the petitioner.

11. In view of the facts stated above I do not find any merit in the writ petition and the same is dismissed accordingly.

Pravara Sanjay.

1986 ALL. L.J. 465

B. L. YADAV J.

Lalitha Narain and another, Petitioner v. Deputy Director of Consolidation, Varanasi and others, Respondents.

Civil Appeal, Writ Petn. No. 3440 of 1975. Df 17.3.1986.

NOTICE FOR HEARING



interest appeared for the petitioner for no reference to the facts of the present case. In that case, the question was whether incorporation of an occupancy license would create a right to enforce possession against the mortgage and whether a suit for the purpose would lie in the Civil Court or so. The facts of the present case are, however, entirely different from the abovesaid case.

9. Similarly in *Shyam Sarker v. Kshaj*, 14 BR 1911 (AL 57) (supra), relied upon by the learned counsel for the petitioner, the facts are entirely different from the facts of the present case. Hence the present case cannot draw any benefit out of that case.

10. It has also been argued on behalf of the petitioner that the petitioner is entitled to the benefit of S 34 of the L. P. Z. A. and L. R. Act and hence the 60 years limitation would not apply against the petitioner.

11. This argument of the petitioner, however, is also not accepted. The law of limitation is procedural law. The law is a law from the day when the law is made and it has nothing to do with the facts of cases. The law of limitation is not to create new rights but it is a law with the purpose as to when which limitation a particular case can be barred or a particular proceeding can be initiated. After the lapse of a prescribed period the right of a person becomes time barred. In other words the right subsists but remedy is lost.

12. It is true under the old law some rights of a person come to an end, nevertheless even after the enforcement of a subsequent law the old rights cannot be revived nor the same could be created. As the right of the petitioner came to an end much prior to the enforcement of the L. P. Zonation Abolition and Land Reforms Act on a T. 62 by virtue of law of limitation of 60 years hence the petitioner cannot be held to be entitled to the benefit of S 34 of the L. P. Z. A. and L. R. Act.

13. However, there is another aspect of the matter. The petitioner has a valid foundation for seeking the benefit of S 34 of the L. P. Z. A. and L. R. Act. If a particular case has not been barred nor the foundation has been lost on the facts and on the same point would not be permitted to be argued for the

first time before the Court under S 34 of the Constitution of India particularly when it requires no recognition in the petition of law. (See *C. Ranganatha v. Velamuri Venkata Narayana Radhakrishna*, AIR 1956 SC 111; *Mangal Kanna v. Mangal Shashidhar v. Shrinani Girdhara Prasadiah Committee*, AIR 1940 PC 134 see page 139 and *S. S. Chellappa v. Lal & Co.* AIR 1961 SC 173). In view of the facts and circumstances of the present case, the abovesaid submission of the learned counsel for the petitioner is not acceptable.

14. No other point has been urged before us, and the first point is decided in substance.

15. In view of the discussion made above the case of the petitioner must and is dismissed. There shall however be no order as to costs.

Prakash Chandra

1986 AIR, 1, 2 467

A. BANERJEE J.

*Parsons Dyer Appellants v. Smt Laffoon Dyer and others Respondents.*

F. A. F. D. No. 61 of 1983 D. 22 of 1984

141 Succession Act (26 of 1925), Sec. 234 and 235 — Previous proceedings — Scope of enquiry.

The question to be considered is a petition for the grant of probate or no and whether the testator had executed the will duly and in accordance with law. In the probate proceedings the Court has to find out whether there were any suspicious circumstances in the execution of the will such as to render the same not being alleged by the propounder. There is no question of notice or alleged fact of alleged claiming estate in the property or filing an objection in the grant of probate unless it was claimed that the will was fraudulently drawn up or the testator had no power to execute a Will on the property and by the non-deposit of earlier claims. In the normal course the term of a legatee would have no right to claim anything so long as the legatee was alive. As soon as the probate is issued of Administration not granted a right originates on the behalf of the legatee. If any legatee dies, his heirs would be entitled to the property. AIR 1982 SC 1245.

property which came to her as a legatee. It is only then that she can claim a share in that property. The effect of Sen. Parham Davis on the present case is to shift her rights on that of Ram Prasad's legatee under Will who died during pendency of probate proceedings. Consider the great order passed not strictly maintained, because such an application is a proceeding for the grant of probate is conventional. The objection and the appeal was filed by her to establish that she was a daughter of Ram Prasad so those proceedings were wholly unrelated for

(Para 10)

(B) **Section 56(2) of 1908, S 299 - Appeal under - District Judge has no power to hear in order - Since appeal against order of District Judge dismissing former application is not maintainable. (Para 12)**

**Further See for Appeal.**

**REPLYMENT -** This appeal has been filed under S. 106 of the Indian Succession Act, challenging an order dated 27-10-1979 passed by the District Judge, Amargarh. The law in application for review of an order dated 10-9-1979 passed by the District Judge. It was imperative on being passed by the District Judge in exercise of powers under the testamentary jurisdiction was applicable and as such the present appeal has been filed.

3. Learned counsel for the respondents contended that the appeal was not maintainable for the order rejecting the same application was not appealable under any provisions of the Indian Succession Act. It was further contended that Sen. Parham Davis claimed to be a daughter of late Ram Prasad and after the death of Ram Prasad she was claiming a share in the property which had come to Ram Prasad from his widow Sen. Sharda Kaur through a Will. On behalf of the respondents it was urged that testamentary suit in the Court of the District Judge was in respect of the estate of late Sharda Kaur deceased mother of Ram Prasad and Sen. Parham Davis, the applicant in this Court was not even mentioned as a legatee under the alleged Will and as such she had no right, title or interest to make the application in the proceedings before the testamentary Court.

3. I have noted the learned counsel for the parties, passed the material on record and I am regarding that the appeal is wholly

unmaintained as it is the application made by Sen. Parham Davis in the Court below.

4. The relevant facts are that late Sharda Kaur executed a will on 26th 1963 and sought as legatees of her her properties. Two of her sons were named in last will Amargarh and the other three in Calcutta. Under the Will she gave one house property in Amargarh to late Laffey Davis wife of Ram Prasad her son. Another property in Amargarh was bequeathed to her three sons Ram Prasad, Shri Prasad and Ganga Prasad. One property in Calcutta was bequeathed to Ram Prasad and the other two properties in Calcutta were bequeathed equally to the other two sons, Shri Prasad and Ganga Prasad. On her death, Ram Prasad moved an application for grant of probate. The matter was pending before the District Judge who was exercising the powers of testamentary court when the Shri Prasad died. Sen. Laffey Davis, widow of Ram Prasad then stepped in to pursue the petition for the grant of probate in place of Ram Prasad. While that proceeding was pending before the District Judge, Sen. Parham Davis filed an objection HCD dated 4-9-1979 in which she stated that Ram Prasad died on 21-8-1970 and she was one of his heirs and that late Laffey Davis did not pursue the probate proceedings in accordance with law and left her son, further that Shri Prasad and Ganga Prasad were in collusion with Sen. Laffey Davis and further probate was the matter of the grant of probate should only be done after the probate proceedings had been done in accordance with law. She also raised further objections that the District Judge's jurisdiction which had been taken in the case related to the estate of late Sharda Kaur and no partition was filed in respect of the estate of Ram Prasad. This objection of Sen. Parham Davis was rejected by an order dated 24-1-1979. The application HCD was rejected. Thereafter late Sen. Parham Davis the applicant had moved in fresh application claiming that she was the daughter of Ram Prasad, a fact which she had not claimed in her application HCD. In support of her claim that she was a daughter of Ram Prasad she filed some documentary evidence. The learned District Judge considered the matter and held that Sen. Parham Davis was not a daughter of Ram Prasad. The application was accordingly rejected. After this order was passed, Sen. Parham Davis moved

an application for the review of the above order and sought to file further evidence. The court below refused the application for several giving reasons. It is against the above order that the present appeal has been filed.

5. The appeal was allowed in the Court on 24-1-1992 and there is an interim order was also passed requiring Scot Laflue Dene to furnish security to safeguard the interests of Scot Partick Dewar when he probate is granted. After this order was passed the District Judge held that the valuation of the property which was in issue to Ram Prasad approximately in Rs. 70,000/- notwithstanding Scot Partick Dewar to furnish security in the sum of Rs. 10,000/-. It was held in the order dated 25-4-1992 that Ram Prasad had left behind two sons, 3 daughters and a widow and if Scot Partick Dewar was considered to be a daughter of his two sons would be at the next line of heirs. Thereafter the District Judge proceeded to consider the application for the grant of probate and by an order dated 19-5-1992 dismissed the plea of the petitioner.

6. It is well established that objection to the grant of probate could be filed by a party concerned thereby by filing a caveat. In the present case no such caveat was filed. As a matter of fact, there is nothing to show that the other legatee had filed any objection to the probate made by Ram Prasad for the grant of the probate. When Ram Prasad filed an application for substitution was moved on behalf of Scot Laflue Dene his widow. As a matter of fact, substitution application was necessary. Only a person named in a bequest in the will could pursue the petition for the grant of probate. Any other person could not, for the grant of Letters of Administration with the Will annexed. Any one concerned could have asked the intermediary court to wait him/her as the petitioner. Scot Laflue Dene's application was therefore, to be considered as such. The question of substitution of the heirs of the deceased Ram Prasad was therefore, not warranted.

7. All the heirs of Ram Prasad would get share of the property bequeathed by Scot Bharu Kaur only after the will was upheld and the probate or Letters of Administration was granted and the legatees got their share. They could not claim any share out of the will of Scot Bharu Kaur, for she had not

bequeathed any of the goods/immovables legately. Judged on this ground Scot Partick Dewar was neither a legatee nor a person interested in the Will executed by Scot Bharu Kaur. The Indian legatee statute. Her remedy during her lifetime is dependent on claiming to be an heir of Ram Prasad. She had not executed any such will and the objections filed by her in C-2 were wholly unfounded.

8. Any testate has a right to dispose of his property in any manner he likes. He may bequeath his property to his heirs or even to a stranger even including the trust and legal representatives wholly or partly. The question was considered in a petition for the grant of probate is to see whether the testator had executed the Will duly and in accordance with law. In the probate proceedings the Court has to find out whether there were any suspicious circumstances in the execution of the Will and if so, whether the same had been alleged by the propounder. There is no question of a limit or alleged limit of a legatee claiming a share in the property or filing an objection to the grant of probate unless it was claimed that the will was fraudulently done, or the testator had no power to execute the Will or the property had been transferred of his/her share. In the present case the heirs of the legatee would have no right in share, anything relating to the legatee's estate. It is only when the legatee died intestate that a right succeeds in their favour in the proprietary share of the test legatee.

9. In the present case when Scot Partick Dewar moved the objection (C-2) Probate of the estate of Scot Bharu Kaur had not been granted. Consequently the legatee had not executed their legacy by them. On the grant of the probate such legatee would be entitled to the property bequeathed in his/her favour. The existence of the administration as the claim may be, was significant under the law of administration property and give such legatee the property bequeathed under the Will.

10. As soon as the probate is a letter of Administration are granted a right crystallises in the hands of the legatee. Many legacies done, but have not been carried to the property which comes to him as a legacy. It is only then that the legatee can claim the bequeathed property. The effect of Scot Partick Dewar in the present case is to establish her right as an heir of Ram

Placed upon before the grant of the probate was, usually, necessary and because such an application is a proceeding for the grant of probate it is necessary. The objection and the application filed by her to establish that she was a daughter of Ram Prasad in those proceedings were totally unrelated for, if she had any right as an heir of deceased Ram Prasad, her remedy lay in filing a suit for a declaration and for consequential relief. The direct issues filed in connection with the objection and the application moved by Mrs. Pankaj Devi are, therefore.

15. The other question is about the maintainability of the appeal. The present appeal has been filed under s. 200 of the Indian Succession Act (hereinafter referred to as the Act). This section reads as follows:

200. Appeals from orders of District Judge.—Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908 applicable to appeals.

16. It is evident from the above that every order passed by the District Judge is not appealable except those which are made in exercise of the powers conferred by the Act. It has. The appeal would of course lie to the High Court from the order of the District Judge in accordance with the provisions of the Code of Civil Procedure as applicable to appeals. This means that once an appeal is filed in the High Court the provisions relating to appeals will govern it. But the question is, upon what reference the appeal under s. 200 is made it clear that the order has in its own behalf it passed in exercise of the powers conferred upon District Judge by the Act. There is nothing in the Act which permits a review of an order by the District Judge. Further, there is no provision in the Act which permits the District Judge to entertain an application to revoke the appointment of a deceased legatee. In the view of matter the impugned order dated 27-8-1974 was not appealable and as such the present appeal is not not maintainable.

17. For the reasons indicated above the appeal must fail and is accordingly dismissed. But I leave the parties to make their own case.

Appeal dismissed.

1985 AIR 1, 1, 470

K. C. AGGARWAL AND B. L. YADAV JJ.

Anand Kumar Basmal and another—  
Proponents v. State of U. P. and others—  
Respondents.

Civil Misc. Writ Petn. No. 16602 of 1983  
Dt. 24-4-1984.

Constitution of India, Art. 226—Mandamus—  
— Accused, petitioners alleged to have committed crime—Police investigation was in progress—Some facts disclosed to police—  
— Absent of petitioners or cessation of proceedings against them under ss. 40-50 of Cr. P. C.—High Court cannot interfere under Art. 226 in the facts and circumstances (Criminal P. C. (1st 1974), ss. 43, 44, 45).

Where it is found that some facts relating to the crime alleged to have been committed by the accused, petitioners were disclosed to the police and the investigation was in progress and from the evidence it could not be said that there was no material or no response against the petitioners it would not be proper for the High Court to interfere at such stage under Art. 226 and it would not come a way of mandamus commanding the police to continue the proceedings and not to resume proceedings under ss. 40 and 50 Cr. P. C.

(Para 8-11)

Case	Material	Chronological	Page
AIR 1983 SC 108			35
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AIR 1982 SC 707	1982 Cr. LJ 615		4-36
AIR 1979 SC 796	1979 Cr. LJ 794		8-13
AIR 1974 Mad 203	75 Cr. LJ 583		8-11

T. Bhatia P. C. Chaturvedi and B. S. Paul  
for Proponents (Basmal, Counsel, for  
Respondents).

B. L. YADAV, J. — The present petition under Arts. 226/227 of the Constitution has been filed by the petitioners seeking a relief for a writ of mandamus commanding the respondents not to arrest the petitioners or to resume the proceedings under ss. 40-50 Cr. P. C. (hereinafter referred to as the Code) in connection with Case No. 363 of 1981-82, Bhatia, District Varanasi.

FACTS AND MATERIALS



2. The facts of the case before a various courts. One Sanjay Kumar Vengrao (petitioner of B.A. Part II of the Bombay House I, narrowly - 400 matras) took the night of 21 "Good December 1981" a report was lodged by his father Yash Kumar Verma about his disappearance on 22/12/81 in P.S. Dehruwamahal, Varanasi. On the same day the village Church near Kalla Ram also lodged a report (Exhibits A to the petition) stating that a dead body of an unknown person was lying near the Kalla Ram village Kanwar Adilgaur Vengrao. Anyhow report was lodged on 22/12/81 by the father of the deceased Sanjay Kumar Verma at P.S. Dehruwamahal, Varanasi. According to the petition, in that report it was stated that the late Sanjay Kumar Verma was missing from the meeting of the student leaders at night of 21/12/81 and he was last seen with Pappu (the first Dabey and one Ganesh Dabey). The deceased had taken his tea at the tea shop of one Jeevan and then he kept his rifle and thereafter disappeared with the deceased Pappu and Ganesh Dabey. It was proved that legal proceedings may be initiated. On these reports the police started investigation and prepared an accurate report and sent the dead body for post mortem examination. By then, since the dead body could not be identified, A copy of the General Diary of 22/12/81 has been filed as Annexure 'C' to the petition.

3. One Sanjay Kumar Dabey (also Pappu) was arrested on 22/12/81 on the basis of the second report lodged by the father of the deceased. According to the allegations made against 7 members of the petition it was alleged that the petitioners have no connection with the alleged crime, but the police wants to harass them and create a false confidence against them and ultimately the petitioners apprehend that they would be imprisoned in accused and proceedings under Sec. 302, 304 of the Code could be initiated against them and they would be sent to jail. The police petition was accordingly filed for issuing a writ of mandamus commanding the respondents not to arrest the petitioners or to initiate proceedings under Sec. 302, 304 of the Code.

4. All the respondents made a counter affidavit as filed by the Executive Magistrate Sessions Officer who was deposed to amongst the persons concerned in Part III(a) of the counter

affidavit it was alleged that on 19/12/81 a quarrel took place between the deceased and Amey Kumar Barwal, prisoner 1 at the compound of the Ashoknagar Temple estate at the campus of the Banaras Hindu University. In that quarrel it was alleged that the deceased had given four slaps to Amey Kumar Barwal, prisoner 1 and the latter had given a kick on the consequences. In para 3(g) of the counter affidavit it has been stated that the deceased was taken to a scooter later on by Sanjay Kumar Dabey, also Pappu, among a company who arrived at on the ground that had taken place on 19/12/81 and after someone the deceased and Pappu (also Sanjay Kumar Dabey) brought a jeep where two persons were already sitting. The deceased and Pappu (also Sanjay Kumar Dabey) occupied their seats in the same jeep which proceeded to a hotel (deceased). It was further stated that the jeep came to the tea shop in the second person knew that the deceased is a burglar. In para 4 of the counter affidavit (exhibits page 7 of writ petition) it has been stated that there was dispute and there evidence to connect the petitioners with the crime and there was no question of any pressure. The investigation was still in progress before the counter affidavit was filed from the Court on 20/12/81 whereby the arrest of the petitioners was quashed and the same order was reiterated at the disposal of the writ petition.

5. The petition came up for reference before us. The counter affidavits of the respondents have been exchanged between the parties.

6. So V.C. Mehta appearing for the petitioners urged that there was no material sustaining the affidavit on the basis of which the petitioners could be arrested. Hence on the basis of material on record it is so manifestly apparent that the petitioners could be connected with the alleged crime. It was accordingly urged that the proceedings for investigation may be quashed and the respondents may be directed not to arrest the petitioners under the criminal code. It was further urged that any police officer may without an order from a Magistrate and without a warrant arrest any person on the circumstances specified in S. 40 of the Code only when there is probable information has been received or a reasonable suspicion exists of the wrongdoer having been committed or any cognizable

officer. He urged that in view of S. 30 of the Code grounds of arrest have to be communicated with particularity to the officer for which the person is arrested without warrant. S. 30 of the Code was also referred when providing procedure for arraignment. Learned counsel for the prisoners strongly placed reliance on *State of West Bengal v. Swapan Kumar Ghata*, AIR 1962 SC 1499 & *N. Sharma v. Brijendra Kumar Tripathi*, AIR 1976 SC 234 and from *Apparajay Madala*, AIR 1974 Mad 355.

¶ Sir P. C. Sengupta, learned Standing Counsel appearing for the respondents urged that the investigation was still in progress and the police were collecting evidence and material. In case no material was found against the prisoners, they would not be arrested and ultimately a final report can also be made against them. He urged that at this stage there was nothing to indicate that there was an intention against the prisoners. His further urged that we were dealing with preventive. He placed reliance on S. 41 of the Code and urged that even on reasonable suspicion any police officer can arrest any person without warrant, he similarly referred to S. 30 of the Code which states that the person arrested has to be informed of the grounds of arrest and also that he can be released on bail when a case for the same was made out. He placed reliance on *State of Jharkhand v. Shri Vinay Kumar Sharda v. Sri Raju Pandey*, AIR 1985 SC 868.

¶ Having heard the learned counsel for the parties we are of the opinion that the point is without substance. The point for consideration is as to whether at this stage when the investigation is in progress can a writ of mandamus be issued compelling the respondents not to arrest the prisoners and not to initiate the proceedings under S. 30 of the Code. From the sentences made in the counter affidavits filed by Sri Somendra Pandey, District Officer P. S. Dasmahapatra, learned Varies, we are gratified that the police is investigating the matter. It is a fact that this dead body could not be identified till the post-mortem examination was conducted. This fact was mentioned in the General Diary as well. There appears to be some other judicial conclusion as mentioned in para 3 of the counter affidavits and in the counter Papey

also. Said Dabey too said the investigating officer is doing the enquiry in which the matter was identified. Further on pointing out that according to the post-mortem was used in investigating the deceased was recovered from the field in which the dead body of the deceased was found. The post had stated that also. We have perused the post-mortem examination and it appears that the blood was coming from the stomach of deceased and some drops of the blood might have reached the soil as well. In this way the investigation is in progress and in this stage of course, he said that there was no material or no suspicion against the prisoners.

¶ Section 41 of the Code is entitled upon by both the sides. According to the learned counsel for the police they were without warrant. It has been provided that a police officer may without warrant arrest through Magistrate and without a warrant, arrest any person after a concerned is an exigent officer, or against whom a reasonable complaint has been made or some credible information has been received or a reasonable suspicion exists of his having been so concerned. It is clear that any police officer can arrest any person provided there exists some reasonable suspicion about the being concerned in any cognizable offence. It is convenient in the night to make some provisions of the Code. Even so, P. C. S. has acknowledged that S. 30 of the Code the police officer shall state the substance of the information on a book to be kept by such officers as prescribed by the State Government and would enter the information to the Magistrate and when it is a non-cognizable offence the police officer would not arrest the case without an order of the Magistrate. But an exigent officer responsible offence is now S. 41 of the Code. Any officer in charge of the police station may, in a cognizable offence, any order of the Magistrate. S. 157 of the Code provides procedure for investigation, which states that on the receipt of an information the police officer shall forthwith send a report to the Magistrate empowered to take cognizance of such offence upon a police report and shall proceed to prevent or shall deposit one of his subordinate officers to prevent the same, to secure the the deceased and maintain the case and, if necessary is take measures for the recovery and arrest of the offender.

12. *State of West Virginia v. Seigrist/Kearney*, 448 U.S. 192 (1980) (seizure made was wrong not if the provisions of the *Prize Claim Act*, 1975 have been interpreted more narrowly than *Sandwich Investments* of 741 *Fancy Lane*. *Colburn* was claiming no business of promoting public confidence prior that is violation of the provisions of the *Prize Claim Act* and *Money Circulation Scheme* (Raising) Act, 1975 (the claim the *Prize Claim Act*). An inquiry was held merely to verify the correctness of relevant information and the court decided that the said *Sandwich Investments* was a partnership firm and had long offering fraudulent services and it was alleged that the aforementioned *Sandwich Investments* was carrying on business in violation of S. 3 *Prize Claim Act*, which was punishable under S. 4 of the said Act. Necessary returns were accordingly demanded against the alleged offences. On this fact whether the offence occurred under S. 4 *Prize Claim Act*, the Supreme Court held as follows in order:—

If an offence is disclosed, the High Court under Art. 226 of the Constitution will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed if, however, the materials do not disclose an offence, no investigation should normally be permitted. Justification for that is provided by the fact that an offence has to be brought to light and must be punished for the same. If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the utmost detriment of the welfare of the country and the mass of the public suffer. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed. But it cannot be said that an investigation must necessarily be permitted to continue and will not be prevented by the court in the light of investigation.”

Further in para 22 the Supreme Court held as follows:—

Whether an offence has been disclosed or not, must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed,

the Court will normally not interfere with the investigation into the offence and will generally allow the investigation to the offence to be completed for sufficient materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of unethical and unnecessary harassment to an individual.”

13. It was accordingly, evident under the facts of that case that if the offence was disclosed the High Court would not interfere with the investigation into the case and will permit the investigation to be completed. Whether the offence has been disclosed or not must necessarily depend on the facts and circumstances of each case. In the present case in view of the main judicial confidence and other progress and the economy of work, etc., we are satisfied that some facts have been disclosed and the police and all concerned would complete the investigation in the proper and would carry on genuine investigation. It is not improper at this stage to interfere under Art. 226 of the Constitution.

14. In re *Apprentice Master AIR 1974 Mad 1054* (seizure was a case on offence here. There is offence under S. 125 I.P.C. was alleged to be in force made out against the accused. But in this case also no charge was made to prove the same and under S. 135(a) he held on page 1471, it was held that the prosecution has proved that the case has authority to arrest the man. This case we are of the opinion, would not help the petitioners.

15. In re *S. N. Sharma*, AIR 1970 SC 724 (seizure was a case under the old Code and the provisions of S. 135 were considered by the Supreme Court and it was held that this was a serious matter in view of the Magistrate power of continuing investigation in a case where the police decide not to investigate under the powers of S. 170(1) and in that event he was given power to proceed and to hold preliminary enquiry in the circumstances of the case may report. It was further held under para 7 page 724 that the Code (old) gave to the police sufficient power to investigate all cases where they suspect that a cognizable offence has been committed. In appropriate cases an approved person can



provisions established by law in the manner under the Code of Criminal Procedure concerning such provisions established by law. The investigation is proceeding under the Code and the provisions have got sufficient remedy provided therein to safeguard their interests. We are confident that the police would investigate the matter very sincerely and correctly and would conclude the same in due season. In case in future evidence is obtained against the petitioners, they would not be prejudiced in any way.

18 In view of the documents made forthcoming we find no good reason for granting order Art. 226 of the Constitution. The petition accordingly fails and is dismissed summarily.

*Prothonotary.*

[1986] All. L.J. 495

A. BANERJI AND V. K. KHANNA, JJ.

M/s. Janki Prasad & Sons, Petitioner v. Naga Malapalika, Karpur, Respondent.

Civil Misc. Writ Petn. No. 233 of 1985. Dtd. 10-02-1985.

U. P. Naga Malapalika Act/Amendment (I) of 1980, S. 17(2)(b) — U. P. Naga Malapalika (General) (Amendment) Rules (1984), R. 16(2)(f) — Charging of Goods on consignment — Miscal-chargement — Part of consignment meant for consumption outside Malapalika town — Goods cannot be charged on such part — Provisions of R. 16(2)(f) render nullity provisions of S. 17(2)(b).

Under S. 17(2)(b) Goods can be charged from a person who brings in any goods or materials within the limits of the Malapalika for its consumption, use or sale therein. The provisions of R. 16(2)(f) providing for charging of Goods from individuals for stated consumption include the provision of S. 17(2)(b). Consequently, in case of mixed consignments the goods which were meant for consumption, use or sale outside the Malapalika town cannot be subjected to Order. Of course, the person bringing on such goods from the Railway premises should be able to satisfy the officials of the town through

proper papers in his possession that the goods are not meant for consumption, use or sale within Malapalika limits of town.

(Para 3-4)

Respect Kumar Agarwal, for Petitioner.  
Sankar Chandra, for Respondent.

A. BANERJI, J. — The petitioner is a registered firm at Lucknow and is working as trading agent of Malabar and Company, Calcutta in the district of Karpur. The petitioner's claims against the town of Malabar part of which is distributed to the districts of Karpur and the respondent the district of Karpur. The respondent has been issued in the Court of Malabar Karpur Railway Station and carried there from to the respective district/districts as mentioned in the Petitioner's Agreement. Part of the goods received is also carried to the districts located within the limits of the Naga Malapalika, Karpur. The petitioner has come with the allegation that the Naga Malapalika charges extra for the consignment to be taken to the goods shed of the railway station even though some of the consignments are transported for delivery outside the limits of the Naga Malapalika and some are carried to other districts. The petitioner's grievance is that the Naga Malapalika has enough to charge extra for the goods which are not being taken to district within the territorial limits of the Malapalika. The petitioner relies on the provisions of S. 17(2)(b) of the Uttar Pradesh Naga Malapalika Act/Amendment, 1980 which empowers the Malapalika to impose order in respect of goods brought within the city for consumption, use or sale therein. The petitioner alleged that the above provision of the Malapalika prevents the collection of the petitioner from carrying the consignment to district outside the territorial limits of the Malapalika and to district outside district without payment of order. The further allegation is that the petitioner is not the owner of the consignment but merely trading agent on behalf of the Principal and carries the consignment to the various districts and markets. The prayer is that the petitioner's claim should be granted for refund of the goods which were meant for consumption, use or sale outside the town of Malapalika from charging extra on such consignment of goods.

I. The stand taken by the Naga Malapalika is that for the consignment which

comes to Karpur Railway station, the passenger is liable to pay octree unless it is satisfactorily established that the consignment in the truck is meant for consumption inside the district of Karpur. These trucks passed as their order B. 152746 of the Nagar Mahapalika. Census District (Amendment) Rules, 1944 provide for levying consumption of goods brought for consumption inside the limits of Mahapalika are granted free or exempt passbook which is to be extended to the mixed consignment as these partly intended for the city and partly for going abroad the city leave the consignment that is received as the goods start of Karpur Railway station as a mixed consignment, the Mahapalika cannot obligate to exempt payment of octree for the taking use of such consignment from the Railway station. In other words the Nagar Mahapalika claimed that the passenger is not entitled to any relief as the wet produce in the consignment received at the Railway station are mixed consignment, partly for consumption within the Mahapalika limits and partly for consumption outside the city.

We have perused the affidavits filed by the petitioners at that time and have also heard the learned counsel for the parties. We propose to dispose of this writ petition as the following steps with the consent of the parties.

1. Answer (1)(C) of the Nagar Mahapalika Affidavits 1948 reads as follows:—

(C) In addition to the items specified in sub-rule (1) the Mahapalika may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes namely:—

(a)

(b) on octree or goods or animals brought within the city for consumption use or sale therein.

(c) a tax on goods or animals as imported into the city in which an owner or a holder is the responsibility of the Commissioner of India.

(d) or (e)

Provided that octree or goods under (b) and a tax under (c) shall not be levied on the same goods.

2. The Mahapalika may shall be assessed and levied in accordance with the provisions of the Act and the rules and bye laws framed thereunder."

According to the above provisions octree can be levied only on the goods which are brought within the Mahapalika limits for consumption use or sale. In other words, the goods which are not brought within the city for consumption use or sale in the city (i.e. which the consignment leaves at the city) or which the consignment leaves at the city for the goods come by rail and are intended within the Railway premises, these would not be subjected to octree until they are taken out of the Railway premises. When the goods are taken out of the Railway premises, octree will be charged on the consignment unless it is satisfactorily established that the goods, which are being taken out of the Railway premises are meant for consumption use and sale outside the Mahapalika limits. The burden to prove that the goods are not meant to be consumed within the Mahapalika limits is on the person who is taking out the goods from the Railway premises. In other words, such a person has to establish from the papers in his possession that the goods are intended use or sale outside the Mahapalika limits. It is otherwise evident that under S. 152746 octree can be charged from a person who brings in any goods or animals within the limits of the Mahapalika for consumption use or sale therein. Goods or animals arriving at the Railway premises are not subjected to octree unless the goods leave the Railway premises.

3. The next question whether S. 152746 of the Census Rules is so far and provides for levy of octree paid levied for mixed consignment as concerned, we find that the above provision cannot nullify the provisions of S. 152746 of the Affidavits. The goods which are meant for consumption use or sale outside the Mahapalika limits of Karpur cannot be subjected to octree. Of course, the person taking out the goods from the Railway premises should be able to satisfy the officials in the latter through proper papers in his possession that the goods are not meant for consumption use or sale within Mahapalika limits of Karpur. But goods meant for consumption use or sale within the Mahapalika are liable to tax. When a rule of custom exists by and the consignment should be able to establish from which it is to be sold or use in the Mahapalika limits and what quantity has to go out of the said limits.

5. However, it may be made to the persons of Full Faith of the Nagar Mahapalika Council through Amendment Rules, 1984, which require the owner or the person in charge of the goods to make a declaration as to personal items on the basis of Bureau Register or Chitai. He has to comply with the above rule. If the relevant papers are furnished, Mahapalika authorities would be justified in refusing to issue the return pass.

6. However, it must be made clear that the consequences taken out from the Railway passbook as the return tickets on a goods train should be properly checked by the same person if they are issued from the paper-passbook forms issued pursuant to such endorsement. If the relevant papers indicate that the consequences are issued by outside city, we are absolutely no reason for detaining such goods by an arbitrary length of time at the station before. It is the duty of the Mahapalika to see that its return tickets do not operate as hindrance to the growth of industry and commerce. The purpose of the return is to collect revenue for the Mahapalika, not to be used as an instrument to stop the trade and to delay or arbitrary seizure of goods carried in the station before. Inasmuch as the Railway goods-train may unnecessarily increase the cost to the trader. When there is no effort by the Government to keep down the price, any effort made by the local authorities to see that the cost of carrying do not escalate by arbitrary seizure of carriers at the station before. The finding at the bottom must be officers and private. At the same time, any person trying to evade payment of taxes should be suitably dealt with.

7. The consequences for which return has been deposited by the persons in law may be retained at the right of the person concerned. If the consequences were issued for transportation within the city they would be liable to return and no question of withholding the said return would arise. But if those consequences were issued for transportation outside the Mahapalika limit then such amount shall be retained by the Nagar Mahapalika Council within the limits of the provisions of a certified copy of the order.

8. The said person is accordingly directed

of the the consequences of the case, there will be no order as to costs.

Order accordingly.

#### 1989 ALL L.J. 477

S. K. BHACHAN AND S. K. MEHROTRA : J.

Julian Singh Bhachan v. Rishi Singh Bhachan and others, Respondents.

Card Mar. West Post No. 14851 of 1989 Dr. 3-10-1989.

(AO) U.P. Co-operative Societies Act (11 of 1963, S. 26(4)) — Order passed by Deputy Magistrate replacing petitioner Administrator of Bank with the District Magistrate — It is in exercise of powers of Magistrate, and not in accordance with civil rights of petitioner — Termination, not wrongful — Question of revoking charges to petitioner does not arise.

When the petitioner Administrator of Co-operative Bank was replaced with the District Magistrate as an Administrator by the Deputy Magistrate, Co-operative Societies on grounds of unsatisfactory performance of petitioner as Administrator of the Bank, by a majority of the powers to change the Administrator, there is no interference with any right including civil rights of the Administrator. (Para 12)

An administrator who has accepted the office cannot afterwards complain his replacement by another person. He cannot be put forward as a right out of the statutory confidence that the power to change an Administrator is vested by the Registrar from time to time. The only exception is when the confidence granted by the statute is void, nothing equivalent to a constitutional provision. The foundation of the exception is not the choice of the holder of the office but the possibility of the power itself. To put it differently, the petitioner cannot claim any right to continue to hold the office even the power transferred to the Registrar to change him is constant. It is implicit in S. 25 that the right, if any, acquired under the appointment to the office is subject to termination by the Registrar. Such a permanent right is created from the very beginning. And if the right itself

RECEIVED AND FORWARDED

is irreversibly under the control there is really no interference with it. The Registrar has an undisturbed power to change the Administrator from time to time. If the exercise of this power there is interference with any right including civil right of an Administrator. Even if there is such an interference it is a necessary incident to the exercise of the statutory power. Further, creating a contract of employment needs not interfere to the appointment of a particular person to an Administrator, the fact is evidence to that employment is reversible by the Registrar unilaterally. The Registrar exercises his power and interferes the employment. Such a termination cannot be termed as wrongful. Therefore, deprivation of avoiding any damages to Administrator does not arise. (Para 5 to 10)

(B) U.P. Co-operative Societies Act (22 of 1963), Sec. 29(1)(a), 29(3), 31, 35 (b) — Order passed by Registrar replacing petitioner Administrator of Bank with Director/Magistrate — Petitioner not afforded any opportunity of hearing — Principle of natural justice not violated in details does not contemplate giving of an opportunity of being heard when Registrar is taking action under these sections — Petitioner not even entitled to post-decisional hearing.

When Registrar passed an order replacing petitioner Administrator with Director/Magistrate, the petitioner was not entitled to any opportunity whatsoever of a hearing before his removal from office. Even though order has effect of making him, with legal consequences.

It is clear from the scheme of S. 29 that the Legislature has contemplated the application of the doctrine of natural justice only when the Registrar is exercising his powers of superseding the existing Committee of Management under sub-sec. (1). Therefore, has not been made applicable when the Registrar exercising power under sub-sec. (4), therefore, standing sub-sens. (3) and (4) of S. 31 together, it cannot be automatically concluded that even in the absence of specific words as found in sub-sens. (3) the Legislature intended that even at the stage of exercising powers under sub-sec. (4) the Registrar should afford an opportunity of hearing to the Committee or any member thereof or the Administrator or

Administrator appointed under it. (a) or (b) of sub-sens. (3). On the contrary, the presence of express words in sub-sec. (1) itself, absence of complete clause in sub-sens. (3) lead to the reasonable conclusion that by necessary implication the doctrine of natural justice has been made inapplicable in sub-sec. (4).

In sub-sens. (4), (3) and (4) of S. 29 the Legislature has adhered to the same policy which is evolved in sub-sens. (3), (4), (3) and (4) of S. 29. If the Legislature includes the applicability of the doctrine of natural justice when the Registrar exercises power under sub-sens. (4) of S. 29, there is no reason to hold that it extended the application of the said doctrine when the Registrar exercises power under (1) of sub-sec. (4) of S. 29. On the other hand, in the absence of any express language or implied in (1) of sub-sec. (4) it will be reasonably inferred that the Legislature has stuck to statutory. Further, the principle was not evolved even at post-decisional hearing. The purpose of post-decisional hearing is to remove the cases got as concerned on duty of an order or action. Such a remedy is not envisioned by provisions of S. 29. The post-decisional hearing is not a remedy. There is nothing in reason to prevent the Registrar to make yet another change and to consider the process of change. The only order is that his action should be bona fide and actuated by desire to preserve and advance the interest of public. Therefore, no useful purpose would be served by giving opportunity of post-decisional hearing to petitioner.

(Para 13 to 17)

(C) Constitution of India, Art. 226 and 14 — U.P. Co-operative Societies Act (11 of 1963), S. 29(3)(a) — Order passed by Registrar replacing petitioner Administrator from his office and replacing with Director/Magistrate — Order passed on basis of report and hence this held in Registrar that continuance of petitioner as an Administrator was not in interest of Bank — Registrar cannot be said to have exercised power arbitrarily. (Para 18)

Cases	Reported	Overruled	Para
AIR 1955 SC 1446	(1955) 1 SCC 158	158	
Lab. SC 180			14
AIR 1961 SC 114	(1961) 2 SCR 103	103	14
AIR 1955 SC 167	(1955) 1 SCC 248	248	14
AIR 1958 SC 194	(1958) 2 SCR 273	273	13, 14



AIR 1967 SC 1246 (1967) 2 SCC 262 11  
 AIR 1967 SC 1269 (1967) 2 SCC 425 11

S. K. Varma for Petitioner, Secretary, Central Tax Requisition.

**S. K. BHARONJI** — The petition is the instance of the member of a State Legislature, since his appointment, as an Administrator of the District Co-operative Bank, Chhapra, a co-operative society, under sub-section 14 of S. 29 of the C. P. Co-operative Societies Act, 1962 (hereinafter referred to as the Act). An order appointing the petitioner with the District Manager as an Administrator is being impugned.

1. The Deputy Registrar, Co-operative Societies, acting as the Registrar has passed the impugned order. In it it is stated, recited that it is in the interest of the Bank that the District Manager shall take over from the petitioner. In accordance with the direction of the Court, the Deputy Registrar has been a competent officer. In it the appointment made are shown. During the tenure of the petitioner the target of the bank has as well as the median term loans could not be advanced. For three term loans the advancement was Rs. 240 lacs as against a target of Rs. 750 lacs. For median term loans the advancement was Rs. 15.34 lacs as against the target of Rs. 60 lacs. The petitioner made bank appointments of the Bank after securing the old employees in violation of the Rules. The petitioner misappropriated a sum of Rs. 59,567 from the Bank to cover the cost of travel during the year 1962-63. He misappropriated a sum of Rs. 6,196/- as his travelling allowance. He used the stamp and the seal of the Bank for performing various payments between Chhapra and Bhilwara, a distance of about 10 kilometers and he also retained various cheques for the same purpose. Some financial regulations were directed under T. A. Billa. A circular was issued on 20th September 1964 by the Registrar of the Co-operative Societies in which some guidelines for the appointment of an Administrator were given. One of them was that a person who had been convicted of any offence or found guilty by competent Court of having committed a civil offence or against which some criminal case was pending in a competent Court should not be appointed as Administrator. After the receipt of the said guidelines it is found that

a Criminal Case No. 197 of 1970 under Sec. 302, 307 and 149 of the Penal Code was pending in the Court of the Additional District Judge, Chhapra against the petitioner. The impugned order was passed under section 14 of the Act as the administrator's performance of the petitioner is an Administrator of the Bank, viz., the main branch of the bank.

2. The impugned order is issued on the grounds: (1) Principles of efficient public relations; (2) Power of removal awarded arbitrarily; (3) Abuse of the power; (4-6) 74 of the Act is so far as the appointment of power to change an Assistant level, into one, but by Arts. 14 of the Constitution and is void; and (6) misuse of power by the Deputy Registrar in violation of the said guidelines for co-operative societies.

3. Every society or body registered in the Administration is treated as an office. On the reply to the question whether the answer is the first submission, a brief reference to the relevant provisions may be made. Chapter VI, top and bottom to S. 2, regarding the duties, Committee of Management, Officer of a Co-operative Society and Registrar. The first expression refers to the Committee of a Co-operative Society, by whatever name called, in which the management of the affairs of the Society is entrusted under S. 20. The second expression refers the President, Vice-President, Chairman, Joint Chairman, Secretary, Member of the Committee of Management, Treasurer, Liquidator, Administrator or any other person employed by Co-operative Society, whether or not an individual or a firm or a company or the business of the society, as to supervise its affairs. The last expression refers, the person for the time being appointed as Registrar of the Co-operative Societies under sub-section (1) of S. 1 and includes, any person appointed under sub-section (2) of that section who exercises all or any of the powers of the Registrar. Section 3 empowers the State Government to appoint a person to be a Registrar of Co-operative Societies for the State. It also empowers the State Government to appoint other persons to assist the Registrar and by general or special order to confer on any such person all or any of the powers of the Registrar. In S. 7 the Registrar is empowered to register a society and to issue a certificate of registration issued by the

Registrar (Section 8). Section 9 provides that any representative of a society shall exercise it as a body corporate by the name under which it is registered, having proper officers and a common seal, and with power to hold the property, enter into contracts, contracts and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted. Sub-section (2) of 9 empowers the Registrar to remove or expel a person from the membership of a Co-operative Society in certain situations. Chapter 17 relates just deals with the Management of Societies.

§ 28 provides that the final authority of a Co-operative Society shall reside in the general body of its members in general meeting. Section 29 provides that the management of every Co-operative Society shall vest in a Committee of Management constituted in accordance with the Act, the Rules and the bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed by the Act, the rules and the bye-laws. The area of the elected members of the Committee of Management shall be such as may be provided in the Rules or the bye-laws of the Society. A duty has been cast on the Committee of Management to make arrangements for payment of all claims for arrears of members of the Committee of Management. However an appeal under State Government to direct that in respect of a certain class of Co-operative Societies, the superintendence, direction, control and conduct of business of the members and Chairman and Vice-Chairman of the Committee of Management shall vest in the Registrar. Sub-section (4) of § 29 provides that where for any reason whatsoever the election of the elected members of the Committee of Management has not taken place or could not take place before the expiry of the term of elected members, notwithstanding anything to the contrary in the Act or the rules, or the bye-laws of the society, steps to start on the expiry of such term. The Registrar is empowered to appoint an Administrator for the management of the affairs of the society. He has also been empowered to change the Administrator whenever he sees fit. The functions of the Administrator are subject to any directions which the Registrar may give from time to time. Section 30 empowers the Registrar to

either supersede or suspend a Committee of Management. In the event of the supersession of the Committee of Management the Registrar is empowered to appoint in its place a new committee consisting of one or more members of the Society or an Administrator or Administrator who shall temporarily be members of the Society. The Registrar is empowered to change a Committee or any members thereof or the Administrator or Administrator at his discretion. The Committee the Administrator or Administrator are designated in the progress subject to any direction which the Registrar may issue from time to time. Section 34 empowers the Registrar to audit the accounts of every Co-operative Society. In § 35 the Registrar is empowered to hold inquiry into the accounts, working and financial condition of a co-operative society under § 36 the Registrar has the power to inspect books, cash and other properties of the Society. Section 37 empowers the Registrar to make an order naming the Society or its Officers or other such persons to remove the default, adopted in the rules, applying suspensions. In 38 and 39 clothe the Registrar with the powers of adjudicating disputes. Section 40 vests the Registrar with the power of dissolving the winding up of a co-operative society. In clause 41 the act appoints a Liquidator.

§ From a comparison of the above mentioned provisions, it is apparent that the Legislature has conferred administrative superintendence and general jurisdiction on the Registrar. He is a powerful officer. The members of the Act revolve round him and the State Government exercises control over the Co-operative Societies through him.

4. We have already seen that the Committee of Management consists of elected members. Clause (3) of sub-section (4) states the powers and the functions of a co-operative society (3) of § 29 may be summed up —

(a) General powers vested in the Registrar of such that the Registrar shall appoint an Administrator for the management of the affairs of the society until the reconstitution of the Committee of Management in accordance with the provisions of the Act, the rules and the bye-laws of the society and

the Regener shall have power to change the Administrator from time to time.

(d) The Administrator appointed by the Regener under sub-section (1) shall subject to any directions which the Regener may from time to time give, have the power to perform all or any of the functions of the Committee of Management or of any officer of the society and shall be deemed for all purposes under this Act, the rules and the bye-laws of the society to be the Committee of Management.

7. In the scheme of S. 21 the Regener is the sole authority to appoint any person as the Administrator. There is no limitation to the exercise of his power as far as the change of an appointment is concerned. No qualification for such an appointment is laid down by or under the Act. No restriction too is prescribed for an Administrator appointed under S. 21. The Administrator has no fixed term. He is there at a stop-gap arrangement. He has to go out for the moment a Committee of Management is recommended and it is his duty to arrange for such a reconstruction within a period of one year from the date of his appointment.

8. In law, no distinction exists between the termination of service under the 'hire of contract' and that in accordance with the 'terms and conditions of service'. A former the same principle should apply to an appointment to an office. Section 21 provides the terms and conditions. They are: The Regener shall have the power to change an Administrator from time to time; the Administrator shall subject to any directions which the Regener may from time to time give, perform certain functions and the Administrator shall retire one year from the date of his appointment or earlier for the recommendation of the Committee of Management.

9. An Administrator who has occupied the office cannot afterwards complain his displacement by another person. He cannot be permitted to wriggle out of the statutory condition that the power to change an Administrator is exercisable by the Regener from time to time. The only exception where the condition prescribed by the statute is not as being inconsistent with some Constitutional provision. The condition of the employment

and the choice of the holder of the office but the suitability of the person itself. To put it differently, the person cannot claim any right to continue to hold the office once the power vested in the Regener to change him is terminated.

10. It is implicit in S. 21 that the right of any person under the appointment to the office is subject to be discharged by the Regener. Such a person's right is removed from the very beginning. And if the right itself is discharged under the statute, there is really no interference with it. The Regener has an undoubted power to change the Administrator from time to time. By the exercise of this power there is no interference with any right including the right of an Administrator. Even if there be such an interference it is necessary and inherent to the exercise of the statutory power.

11. Can an Administrator recover damages for wrongful removal from office? If yes, the person's duty, appointment, right to vacate an office. An appointment may come into existence either by act of parties or by operation of law. Likewise, the terms of conditions of an appointment may have their origin either in contract or in a statute or provisions having the force of a statute. Assuming a contract of employment comes into existence by the appointment of a particular person as an Administrator, the term or condition is that the employment is terminable by the Regener unilaterally. The Regener retained his option and terminates the employment. Such a termination cannot be termed as wrongful. Therefore, the question of any damages being awarded by the Administrator does not arise.

12. The Deputy Regener or the occupied order merely replaced the person with the Deputy Regener. The person was not entitled to any appointment whatsoever if a bettering before he returned from the office. In the case of officers the Deputy Regener has under the orders of the Court given reasons for removing the person off retaining the person. Undoubtedly, necessary allegations have been made against the person and he was not afforded any opportunity to give his version to those allegations. Violation of the principles of natural justice having occurred



the fact that the members of management or of any officer of the society, and shall be deemed to be all persons under the Act, the rules and bye-laws of the society, to be the members of management. In sub-section (1) a duty is cast upon the committee, administrative or administrative appointed under sub-section (3) and (4) in seeking for the recommendation of the Committee of Management to submit the management of the Corporation. Secondly, on the expiry of the period of one year unless it is in sub-section (3) it is clear from the scheme of S. 20 that the Legislature has contemplated the appointment of the directors of mutual societies when the Registrar is seeking approval of establishing the existing Committee of Management under sub-section (1). This doctrine has not been made applicable when the Registrar is exercising power under sub-section (4). Therefore, reading sub-sections (1) and (4) of S. 20 together, a reason for non-application of this doctrine is the absence of specific words as found in sub-section (1). The Legislature intended that except the major officials only power is under sub-section (4) the Registrar should afford an opportunity of hearing to the committee or its members or, and/or the administrative or administrative appointed under clause (1) of sub-section (1). On the contrary, the presence of explicit words in sub-section (4) and absence of complete silence in both sub-section (4) lead to the inevitable conclusion that by necessary implication the doctrine of mutual parties has been made applicable sub-section (4).

16. In sub-section (4) read with S. 20 the Legislature has adhered to the same policy which is evolved in sub-section (1) of the said section of S. 20. If the Legislature excludes the applicability of the doctrine of mutual parties when the Registrar exercises power under sub-section (4) of section 20, then it is a reason to hold that it intended the application of the said doctrine when the Registrar exercises power under clause (1) of sub-section (4) of S. 20. On the other hand, in the absence of any statutory clause or implied intention the said sub-section (4) will be appropriately referred that the Legislature has a role in the policy.

The contents of S. 20 clearly do not support the contention of the rules of law and power by the Registrar while exercising power under sub-section (4) of S. 20 or under clause

(1) of sub-section (4) of S. 20. Sub-section (4) of S. 20 provides that the Registrar may in certain instances call upon a co-operative society, cooperative, within a specified period, an officer from the office hold by him and whose removal, who is deposable from holding any office in a society for a period not exceeding three years, whenever the society shall after affording opportunity of being heard to the officer concerned, give such order as it may direct in this section (4) of S. 20 makes it clear that the Registrar may exercise the power referred to therein. Mutual provisions in any sub-section that was created by sub-section (4) of S. 20. Sub-section (4) provides that on the failure of the society to take action under sub-section (1) the Registrar may after affording opportunity of being heard to the officer and for reasons to be recorded and communicated to the person and the society, concerned remove or remove and disqualify for a period not exceeding three years, the officer from holding any office under the society. On a bare reading the provision does not apply to the appointments made either under clause (1) of sub-section (4) of Section 20 or under sub-section (4) of section 20. Assuming supplies the legislative enactment is made crystal clear that the power of an appointment of being heard was contemplated when the Registrar is taking action under S. 20 or under S. 24.

17. There are another reason as to why the presumption of the applicability of doctrine of mutual parties cannot be applied. In S. 20 as well as in S. 24 the Registrar has been entrusted with the power of direct removal of changing the Administrative or the members or, from time to time to limit the expenses of the society. These instances are of urgent nature. Further, the presumption is that the Registrar exercising his power on the public interest and satisfaction of the affairs and the provisions of the Act. Therefore, the presumption cannot be allowed to make any presumption of the fact that the Registrar had not afforded mutual opportunity of being heard to the society the power of removing him from the office even though the order has the effect of ending him with a mutual cooperation.

18. He doubts the heart of the such administrative rule in "power and law (1) in action" by which a mutual parties and power in

disregard of justice. We have said that an Administrator has no right to conduct an office. We have also said that the terms of the statute rule out the application of the real rule of natural justice. The question is: "Should the petitioner be given a post-decisional immediate hearing?" While admitting that question is a conscious effort should be made to avoid an approach which may result in the answer to the question in the question posed. Assuming the invalidation of the impugned order caused up with certain impact, the non-observance (by the petitioner) therefore, nothing can be affirmed by not affording him an opportunity of presenting his case. It is not a statutory requirement that the Registrar should afford reasons while changing an Administrator. The purpose of a post-decisional immediate hearing is to restore the status quo ante existing on the date of an order or action. Such a restoration is not considered necessary for purposes of S. 29. The power conferred by law on a court, inherent in the natural state, the petitioner has brought to our notice the fact that the Registrar has now replaced the Deputy Magistrate with a Committee of seven persons headed by a Chairman. There is nothing in the statute to prevent the Registrar to make yet another change and recommence the process of change. The only rule is that the same should be honest and impartially the desire to restore and advance the interest of the public. Therefore, no useful purpose will be served by the giving of an opportunity of a hearing to the petitioner now. It is an abuse of the process that the petitioner is entitled only to a post-decisional hearing.

19 To sum up the petitioner was appointed as an officer with a provincial right. He had an right to continue as an Administrator. The statute excluded the application of the real natural justice rule. The petitioner was not entitled to a pre-decisional hearing. He is entitled to a post-decisional immediate hearing and the giving of a hearing now will be an abuse of justice.

20 The reasons advanced by the Deputy Registrar in the counter-affidavit filed in the court show that he has made and made this believed that the continuance of the petitioner as an Administrator resulted in the interest of the State. It comes therefore, to me that he

assumed the power arbitrarily. The silence of the Act has thereby been referred to by us in the earlier part of this judgment. The petitioner to the fact and the relevant provisions, particularly those contained in Chapter 10 are clear and does not containing doubts to be understood (Chapter 10 of the section 14 S. 29). An Administrator is appointed to manage an organization in accordance of the belief of a Ministry to elect the members of a Committee of Management. An Administrator has to control the powers and perform the functions of the Committee of Management and for all practical purposes he has been given the name of the Committee of Management. We have already indicated that the Registrar has been vested with wide administrative and supervisory powers. He is well-known appointed by the State Government. It was required to be said that the Legislature has conferred wide administrative and supervisory powers upon the Registrar to change the Administrator from time to time. It goes without saying the terms of those, it is ordinary in the use of which implies that the powers of an authority the exercise of power by that authority is always subjected to a challenge on the ground of mala fide or on the ground of abuse of power without abuse means or administrative considerations. We therefore, do not find any substance in the allegations made on behalf of the petitioner that the Deputy Registrar acted with malice in passing the impugned order or the provisions of clause (b) of sub-section (4) of S. 29 of the Act contained in Art. 14 of the Constitution.

21A We are now left with the last submission. According to the petitioner the impugned order was passed by the Deputy Registrar under the direction of and at the instigation of Sri Kanda Nuth Mahan, the then State Minister for Co-operation in the Government of Orissa. Sri Mahan, Sri Kanda Nuth Mahan has filed affidavits in the Court. He has denied the allegations made by the petitioner. He has avowed that he never gave any direction to the Deputy Registrar. nor made any request to the Deputy Registrar to withdraw previous orders against the Deputy Registrar so as to induce him to pass the impugned order. The Deputy Registrar in his affidavit has avowed that he passed the order on his own without being influenced or aided by Sri Mahan. These affidavits

accord a death knell of the subscription scheme on this part of the case. Evidence is placed on behalf of the petitioner on certain newspapers, magazines filed and annexed to the rejoinder affidavit. These magazines have no subscription value and are not even advertised. The respondents who are alleged to have used the name of the newspapers concerned for publication are not the parties to the petition nor have their affidavits been filed.

20. All the submissions made in support of the petition are devoid of merit. The petition (as amended) but without any evidence to back.

*Petition dismissed.*

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**S. S. SAREEL ANDY vs. KHAIRI J.**

M/s. Suresh Kumar & Co. and another  
Petitioner v. State of U.P. and another  
Respondents

Civil Misc. Writ Petn. Nos 4334-4336 of 1984 and 48867 of 1985 D/- 4/12/1985

**Prize Draw and Money Concession Scheme (Banning) Act 193 of 1974, S. 3(a) - Prize draw - Lucky draw scheme by State having element of Prize draw and an element of chance - Held, the Scheme squarely falls within the prohibition of Act**

The Petitioner has started a sale promotional advance instalment scheme on various terms and conditions. The scheme envisaged a bonus scheme and provided for certain benefits as incentives to persons who started buying the articles on monthly instalments and in order to ensure prompt and regular payment of their monthly instalments. The bonus scheme provided inter alia that a person who pays the scheme shall pay the usual instalment and compare to pay the further monthly instalment before the stipulated date. In order to offer incentive to the customers draw are provided for a lucky draw every month. A person who has won a lucky draw will not be required to pay any further instalment. Those who are not winners of monthly lucky draw will get the advance when the payment of last instalment

has to be paid. The scheme is only being started during the continuance of the scheme. For each point by paying the balance instalment a full instalment will be credited to the participants in the monthly lucky draw. In case such a person is a winner he may actually take these instalments equal to subsequent instalments shall be refunded to him and he can purchase any article available with the item for a price equivalent to the said amount. Those described by the petitioner as Instalment Sale Promotion Scheme.

Held, that the petitioner Scheme squarely comes within the prohibition of the Act. It is not permissible by instalment sale prohibited by the Act but the petitioner scheme is not a scheme providing for only an instalment and instalment. It has an element of prize draw and an element of chance too. The chance is that if a subscriber draws a lucky number, he gets the goods at a reduced price. The essence of the Act is to prohibit such a scheme.

(Para 11, 12)

The factual difference is whether Scheme for three instalment instalment of goods sold and the scheme which ran for 18 months have different rates of subscription and whenever draw was a lucky draw, the subscribers whose numbers were immediately preceding and succeeding were given a percentage of one instalment and if the subscribers had to pay all the 18 instalments and they draw draw the lucky number, they would get a cash prize of Rs. 20/- by drawing the lucky number would not within the Act the scheme was not a prohibited scheme but a sale based under the Act. (Para 17)

**Case Related Chronological Para**

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**K. N. Tripathi for Petitioner, Standing Counsel for Respondents**

**S. S. SAREEL, J. -** In writ petition Nos 4334 and 4335 of 1984 the petitioner No. 1 is a partnership firm and the petitioner No. 2 is a partner thereof.

2. The petitioners in Writ Petition No 4334 of 1984 carry on the business of purchase and sale of electrical goods on instalment subscription. The petitioner claim that in

order to promote their sale at or registered under orders, encourage the buyers to make purchases & has invited the sale of promotional advance subscription scheme on certain terms and conditions. Inagapremam writes from the Press Club and Money circulation Scheme (Bharatga) No. 4775 (Invitation to be referred from the Act) has been issued to the effect from 15.11.87 and the Act has put a ban on joint club and money circulation schemes. The audience is invited to promote the promotion of the company with their scheme. They claimed that they had entered correspondence with the subscribers but the subscribers are not agreed with the promoters that they should be recovered by the Act. In these circumstances, the promoters have sought relief from the Court under Article 135 of the Constitution of India and prayed that a suitable writ order be directed in the nature of mandamus to issue commanding the respondents to enforce the provisions of the Act and the Rules framed under the Act against the promoters.

3. The promoters case is that the firm solicited financial credits on the basis of total cash payments on credit as follows per or on payment as evidenced by order as a promoter in sale and to encourage the buyers to make purchases in instalments. The firm issued a sale promotional advance subscription scheme on certain terms and conditions. Their latest scheme was called a benefit scheme and provided for certain benefits and incentives to persons who want to buy the said articles on monthly instalments and in order to ensure prompt and regular payment of such monthly instalments. The benefit scheme provides that the person who joins the scheme shall pay the initial instalment and continue to pay the further monthly instalments before the specified date. In order to offer incentive to subscribers, there is a provision for a lucky draw every month. A person whose name is in the lucky draw will not be required to pay any further instalment. Those who are not winners of monthly lucky draw will get the articles after the payment of last instalment but if any one wants the article at any time during the continuance of the scheme, he can get it by paying the balance instalment in full and will be not be entitled to participate in the monthly lucky draw. In case such a person is a winner in any monthly lucky draw or receives

equal to subsequent cash instalment, shall be refunded in full and he can purchase any article available with the firm for a price equivalent to the cash amount. The scheme is described by the promoters as Instalment Sale Promotional Scheme.

4. The promoters maintain that the scheme is not a scheme of joint club as it does not encourage the sale of articles, the sale is a consequence for a person to pay the money on any date or contingency or can applicable to persons who want to purchase the article on instalment.

5. A copy of the scheme has been filed as Annexure I to the writ petition. The scheme inter alia provides at clause 11 that the membership fee is not subjected to the scheme and not be refunded to the subscribers. It also provides that if any person who has paid two instalments, wants to leave the scheme he may do so subject to the condition that the firm will forfeit the 100% and return the balance money to the subscriber provided he has any goods available with the Company with that amount. The scheme also provides that the price of the refrigerator has been kept in view the present price of the refrigerator including the interest and sales tax and if there is any change in it, the subscriber will have to pay for it.

6. Press Club has been declared as not fit of the Act as follows:—

Press Club solicited any instalment or arrangement by which some value added under which a person orders or obtains a promoter financial agent or in any other capacity member in one lump sum or in instalments by way of contribution of subscriptions or by sale of shares, securities or other instruments involving other persons or a membership fee or contribution fee or interest charges or in respect of any savings manual benefit fund or any other scheme or arrangement by which the name called and or gets the article to be sold in any year delayed or the money accruing from instalments or other use of such money for any of the following purposes:

1. Giving or creating pecuniary or otherwise to a specified number of subscribers as determined by lot, draw or in any other manner; prize or gift to cash or in kind



whether or not the receipt of the price or gift is under a liability to make any further payment in respect of such scheme or arrangement.

It is according to the submissions, each of them as far as they were very great or gift, the whole or part of the subscription, contribution or other money collected, with or without any bonus, premium, interest or other advantage by whatever name called, on the satisfaction of the different arrangements or in order to bring up of the present stipulated scheme.

But does not include a consideration that just submitted that in view of the provisions of S. 2 of the Sale of Goods Act, there is only a contract of sale between the promoters and the subscriber. It is further stated that the essence of a contract for sale is the transfer of taking possession of the goods or promised to be paid and the transferee such a case is liable to the transferee as a debtor from price to be paid. It is contended that the sale is complete and ownership of the goods would pass to the buyer as soon as the terms of the contract and delivery of goods may be made at a future date to be determined by the terms of the contract.

7. The submitted scheme was considered a price when in Mrs. Harbison India Refractories Company v. State of U. P. 1964 A.L.J. 441. There is scheme provided for a lucky-draw scheme. The members of the Lucky draw were to get the articles stated a day thereafter and was to be required to pay remaining instalments. The remaining members who have not been declared winners would get their articles only after paying the last instalment. It may be said that even if the scheme is treated as a sale, the promoter-subscriber could not amount to a contract of sale within the meaning of S. 2 of the Sale of Goods Act but when there is agreement to sell. It is further held that the maximum appears to be that the sale is goods payable to the member of the scheme only when the last instalment is paid. Since the passing of the title of goods would be a further time subject to certain conditions, the scheme would come within the definition of an agreement to sell and not a contract of sale.

8. The Bench went on to hold that the money so deposited for the members within

promoters of the scheme by way of contributions or subscriptions in the money which the promoters are required to hold in trust for the members of the promotion of the first instalment when the agreement to sell amounts was a completed sale. The Bench also held that if the promoters are trustees of the money so deposited and that money is utilized in drawing lots, it is the interest of the members which is being utilized. Thus being the position the scheme comes within the definition of the Price Chit as defined in S. 2 of the Act.

9. A case relied upon by the promoters is *M/s. Second Investment Company Ltd. v. S. Beggs & Sons, Solicitors and Char. Trustees*, 118, 1964 A.L.J. 31. The scheme in that case was not considered to be one of price chit. The facts of that case are greatly different and have no relevance for determination of the present case.

10. The definition of the Price Chit has been quoted above. A price chit is defined as a subscription or arrangement under which a person collects money in a lump sum or in instalments by way of contribution of subscription or any other scheme or arrangement by whatever name called and utilizes the money so collected in any part thereof or the income accruing from investments or other use of such money for (i) or any of the purposes specified in S. 2(a) of the Act which includes giving or awarding gratuitously or otherwise to specified number of subscribers or determined by the draw or in any other manner prize or gift or such or in kind, whether or not the receipt of the prize or gift is under a liability, to make any further payment in respect of such scheme or arrangement.

11. It will be immediately seen that a scheme of a lucky draw in the promoters' scheme would be a bona fide scheme for making further payment of instalment to get a subscription. There is then a gift is held to be a transfer of a thing, whether or not the gift is held to be a transfer of a thing, whether or not the gift is held to be a transfer of a thing, whether or not the gift is held to be a transfer of a thing.

12. The argument of the learned counsel for the promoters that there is no contract of sale of subscription is that at the time that a subscriber who draws a lucky number gets the subscription on the payment of a specified number of instalments. The contract then

between a mile but the passengers get the compensation and the passengers refuse to fall within the definition of First Class at  $\frac{1}{2}$ . Payroll the Airlines they collect more, many other elements within the economy will follow this line.

13. It is urged that a rule by unanimous vote not prohibited by the Act has the potential to change a not a scheme providing for only a contractual sale in substance. It has no element of privity, and involvement of character is it. The change is that it is a scheme that shows a fairly certain to give the goods at a reduced price. The intention of the Act is to prohibit such a scheme and the potential scheme requires some, within the contribution of the Act.

19. In the sample register specified above, the following information is to be furnished:

15 Now taking up the first portion of the 2007 to 2008 tax year, the questions of law are identical with the questions posed in *Wynn*. Pursuant to §§ 6.03 and 6.05 of the Rules and these portions can also be conveniently disposed of along with the abstracted two-year portions.

14. The factual difference is that there are more varieties of plants offered and the system which ran for 16 months had different rates of participation. The other difference is that whenever there is a lucky draw the participants whose numbers are immediately preceding and succeeding are given a percentage of the amount. In other words, they will get the proceeds as a part of 10 consecutive numbers. In Lucky, if the number is 10 to pay all the 10 numbers, and they did not draw the lucky number, they will get a percentage of Rs. 50% by drawing the lucky number.

17 We do not find that any of these features establish that the scheme is for a profit plan which has been entered under the Act. The revenue also seems correct.

14. In the results that were presented and discussed with you:

<sup>29</sup> We are informed in the Star that the last volume of the proceedings of the House No. 5554 of 1981 will come out in August, 1982 and the last volume of the proceedings of the Senate No. 5555 of 1981 will come out in

mid-April 1988. If the respondents stopped from assuming that when the subjects in the studies would suffer randomly treatment in the two treatment groups that the respondents will not interfere with the parameters concerning the subjects who study in August 1988 in West Pocono, No. 428 of 1988 and in April 1988 in West Pocono, No. 428 of 1988. They will however be expected to start new other similar studies.

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1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

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**Euro-Statistik** Der Apparat ist leicht  
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14) *Sarcodon* Art (30 of 1924, 3 10) = *Wd* = *Encreux* = *Nou* reproduction of *ed* = *Edue* = *Tortue* (1924, 5 years after invention of *ed* = *Encreux* of *ed* and its abbreviation proved by allowing *encreux* = *No* evidence of any important correspondence indicating the *encreux* intended to provide by *ed* = *Inference* upon *production* of *ed* could not be drawn as ground of *no* *encreux* (1924, 5 10)

(8) **Successors Act** (30 of 1925), s. 27a — **Probate** — **Grant of** — **Delay in filing application for grant of probate** — **Death of testator in 1960** — **Filing of application for probate 23 years thereafter** — **Applicant's intention just 10 months after death of testator along with copy of will** — **Name of propounder as well as objectors sustained** — **Copy of will also filed in court** — **First year after death of testator** — **In absence of testimony for making probate of will sustained will and in view of the fact that being an estate where will was the fact of the day when probate cannot be made, application for probate cannot be thrown out on ground of delay in making it.**

HQ Received June 20 at 1924.  
S. HALLAM, Esq., Chicago, Ill. — A copy of vol.

<sup>1</sup>Report of the pilgrimage of A. Martin, Marquis  
of the Order, 1841-1842 (1900).

11. *Journal of the American Medical Association*, 277: 1001-1002, 1996.

created by testator simultaneously on same date — Each copy duly signed by testator and attesting witnesses — Initials of testator and witnesses present on each execution and modification — Each of four sets became original document — Each set of will was submitted to evidence (Evidence Act (I) of 1872), § 42. Court law document.

(Para 13, 14)

(B) Evidence Act (I) of 1872, § 42 — Admissibility of document — Document submitted in evidence without any signature — Signature as to its admissibility could not be raised at a later stage in appeal. AIR 1973 SC 406 and AIR 1978 PC 174, *infra*.

(Para 15)

(C) Succession Act (36) of 1925, § 45 — Will — Suspicious circumstances — Undue influence — Testator bequeathing entire house property to son and not giving any share to a daughter — Daughter living in the mortgaged property because looking after testator after death of his wife — Testator executing will in the house of the son in different state — Evidence of attesting witnesses that son was not present in the room where will was executed — From mere fact that son had gone to call witnesses, statute of undue influence by him could not be inferred when testator did not want that his property should go to outsider and other set of male blood descendants.

(Para 16)

Cases Cited	Chronological	Para
AIR 1973 SC 406 (1973) 1 SOC 8	17	17
AIR 1967 SC 526	18	18
AIR 1966 SC 344	17	17
AIR 1962 SC 607	9	9
AIR 1958 SC 443	17	17
AIR 1959 Orissa 113	11	11
AIR 1954 Cal 117	1964 Cal LJ 278	14
AIR 1954 SC 580	8	8
AIR 1953 Lab 371	31 Cal LJ 156	
	11	11
AIR 1928 PC 113	11	11

B. L. Sharma (for Appellate J. M. Prasad for Respondents)

**B. K. SHANKARIA, J.** — This Special Appeal has been filed by Son, Shankaria Dey against the judgments of 24-03-1983 of a learned single Judge of the Court in

Testamentary case No. 11 of 1979 (last Para 1 of 1980-volume) against testator granted to the respondent Laxmi Mohan Mathur of a will executed by his father Man Prasad Mathur on 1-4-1952.

3. The facts giving rise to this Special Appeal unfolded by the respondent himself in last Man Prasad Mathur letter of the appellant and the respondent versions of Testamentary (I) Anwarul Ahlebad who was a retired Head Assistant of the office of the Administrator General at Allahabad and owned properties worth more than Rs. 10,000 in the city of Allahabad executed a will No. P/1 on 1-4-1952 at Kanpur where he was living at that time and which son Laxmi Mohan Mathur who was employed in the Kanpur Electricity Supply Administration. The will was duly executed and signed by the testator before witnessing witnesses namely, Ganga Narain Prasad (P. 9), Laxmi Shyam Sooder (respondent) (deposing need) and of his own free will and accord whereby he bequeathed his three houses No. 281 including shops and 212 along with all other properties to his only son Laxmi Mohan Mathur and the wife of Laxmi Mohan Mathur namely Phool Karna except the Government situation of the land value of Rs. 1000/- only which were given to his daughter Son, Shankaria (appellant) is a further clause that the testator bequeathed the will prepared as quasi-witness and all the three documents were signed by the testator and he notified the attesting witnesses whose affidavits he referred filed along with the petition. The respondent, Prasad Mathur gave own copy of the will duly executed and attested by the witnesses in his name Laxmi Mohan Mathur and another in his own name. In B. K. Mathur then legally questioned this Testamentary Dey's appeal. The attesting copy of the photograph of the will was kept by the testator in an envelope (P. 4) which was discovered later on by Laxmi Mohan Mathur after the death of the testator on 20-4-1954.

4. An application for marriage was moved by Laxmi Mohan Mathur on 12-4-1967 wherein a four-copy of the will was filed. One of four copies of the will had been filed by Laxmi Mohan Mathur on No. 281 of 1968 at the court of the Additional Magistrate Allahabad and another copy had been filed by him along with the petition for probate in

the Court. It emerges that Lady Mabel Maitland Macdonald and her wife Mrs. Phoebe Korman Maitland were appointed co-executors of the will. Phoebe of the previous marriage holding Lady Mabel Maitland succeeded to Sir J. Stuart Macdonald's Mrs. Phoebe Korman Maitland for the Board of Revenue and the Revenue Controller of the District City. Last Phoebe Korman wife of Lady Mabel Maitland died in 1910 in which the will was made. She had no objection to the gift of property in favour of her husband. However, even along with a contrary affidavit was filed on behalf of the appellant Mrs. Shakuntala Devi, daughter of late Phoebe Maitland, she stated that the will was an unperfected document and a writ of habeas corpus was filed by Lady Mabel Maitland.

4. On the basis of the pleadings of the parties the learned judge framed the following five issues:—

1. Whether the will (Annexure 1) is the genuine will of 14-10-1917 lastly executed?

2. Whether the appellant executed the will on 14-10-1917 and the respondent will and whether it was in a sound disposing mind?

3. Whether the will is in 1917 was legal and executed document? It was effect?

4. Whether the defendant is a person interested and entitled to file the cross and the objection?

5. Relief?

5. After discussing the issues evidential arguments in detail the learned judge has decided all the issues except issue No. 4 against Mrs. Shakuntala Devi appellant from the appeal.

6. Dr. Gyan Prakash learned counsel for the appellant has urged that even though the will is stated to have been executed on 14-10-1917 and the testator died on 10-4-1946, the will was not yet registered. A statutory application was moved by the respondent Lady Mabel Maitland on 12-4-1947 but the will was not produced and only a copy thereof was produced and says that it was impossible to file the record as stated to have been needed for the application. An objection was made by the respondent under 12. Section under 1) of Act 3 of 1947 on 15-11-1947 regarding the

of the testator that the will was not produced. This application was rejected on 20-3-48 on the ground that it had not been moved by the joint counsel Lady Mabel Maitland and Mrs. Shakuntala Devi. He also urged that there were 10 copies of will were in possession of which was stated in the original and the others as copies or duplicates, but not clear which one is original. Therefore, no problem can be granted the further proceedings that the will was unperfected because the testator had deposited the original of her will under the District Commissioner. As to whether the property of her husband along with her brother respondent's presence at the time of execution of the will and calling the witnesses by her make the will proper.

7. After going through the evidence or moved both civil and criminal and the judgments of the learned judge, which deals with all management detail, we find to have a copy of the goods owned by the testator owned for the appellant.

8. It is true that even though the will is dispute was executed on 14-10-1917 by Mrs. Mabel Maitland and her son Mrs. Mabel Maitland and even years thereafter the will was not yet registered. This however is a misconception of no significance. One execution of the will including its execution by two witnesses is indispensable. Mrs. Mabel Maitland and Mrs. Mabel Maitland had been fully provided by one of the existing witnesses Mrs. Mabel Maitland. P.W. 1 who was Mrs. Mabel Maitland the respondent Shyam Sunder (the other existing witness) giving their signatures on the will. P.W. 1 (Mrs. Mabel Maitland) signed the name in the presence of Mrs. Mabel Maitland and Shyam Sunder. All the concerned material documents on both pages of the will have been attached by both one of the above-mentioned persons. Mrs. Mabel Maitland has emphatically denied the suggestion that Mrs. Mabel Maitland was in a very poor state of health at those days. Nothing adverse has been shown in her cross-examination which is currently made about the veracity of her statement. His evidence which will corroborate from 14-10-1917 to 10-4-1946 as well as evidence of Shyam Sunder on 17th Jan. 1939 which are on the record as well as the evidence of Lady Mabel Maitland. P.W. 2 and other evidence on the record. In these circumstances, to draw any inference against the genuineness of the

will (i.e. P 1) on the ground of undue influence is a wholly unavailing plea held in *Shirley Doo* [Nagpur Bench v. Ramu Doo, AIR (194) SC 266].

9. Relying on a decision of the Supreme Court in *Rani Parvati Devi v. Ramu Chagapure Naray Doo*, AIR 1962 SC 267 the learned single Judge has rightly held that it is not necessary that a will should be registered at every stage. Registration of the will gives support to its authenticity but that it not conclusive. It was the privilege of the testator to get the will registered. If he did not get it registered during his lifetime of almost 9 years, the plaintiff respondent cannot be blamed for the same. It was open to the testator to change his will any time during the period of 9 years but there is no evidence that he did so. There is no evidence of any suspicious circumstances indicating that the testator was coerced or unduly influenced by his will. Reference was made in this connection to a letter dt 11.4.1966 by P 1 to her son named Gurdar Mahar which again was for the benefit of her children. The learned counsel for the appellants has taken the statements contained in the first part of a statement out of its context and totally ignored the entire portion of the statement. He argued my daughter and Gure Chagapure are Allahabad they should be accommodated here if they want to live in peace with parents it would be a disgrace to my name if my daughter lives in a rented house but if she wants to live in a separate house there is nothing to prevent her. Now you should not open her or let her live my shame as far as possible. He has further written as that letter. I do not want my friends to go to an orphan or even out of her main lineal descendants who according to Hindu Succession and its amendments should always remain smooth. Tinpan and Gure Prasad for the peace and welfare of the souls of the deceased forefathers. Is that will and in this letter. He has only made provision for Rs. 1000/- for the appellants. In the actual this letter he has written that I am giving a copy of this letter made a copy of my will to Gure Chagapure along with also as we shall get visitors are respected as the proper time. In the affidavit of the P. N. Member husband of the appellants dt 19th Feb. 1980 on the record there is no specific detail that P. N. Mohan also Gure Chagapure did not receive the letter and the copy of the will. On account of his

claim that the will is fabricated but no evidence has been produced to support this contention. From the content of the will (i.e. P 1) appears that every conventional condition of the will has been agreed by the testator and the two surviving members on each page. Therefore, we are not inclined to hold that the will is a fabricated document. In these circumstances, non registration of the will creates no suspicion or is controlled by the reasons stated by the appellants.

10. How we proceed to examine the alleged alleged suspicious circumstances of not producing the will as Nagpur presiding as well as the appellants the relevant facts under R. 1 read the alleged statement before filing the petition for grant of probate. It is clear that the death of the testator took place on 10th Feb. and the petition for grant of probate was filed after about 12 years of the death of Sri Manu Prasad. In Laxley Mohan P. N. 2 has however explained this delay in the statement by stating that he had been in service and had been transferred from place to place and he could not therefore apply for probate. There is no provision provided for making the probate of a duly executed will. To remove the suspicion suggested by the learned counsel for the appellants it will suffice to say that Sri Laxley Mohan moved an application for probate on 10th Feb. just after 12 months of the death of Manu Prasad which is clear from the order on record passed by the Deputy Commissioner, Nagpur. Although a true copy of the will was filed which was compared with the original will and that both the surviving members namely Gure Manu Prasad and Gure Prasad were examined by Laxley Mohan Mahur in support of his claim on the basis of the will. The learned authorities missed the names of the appellants and the respondents both against which appeal was filed by the respondents before the District Judge. If true copy of the will had before the learned authorities it was inevitable because the record has been searched and the respondents have been listed for the same. As regards the non filing of the will as the relevant application filed on 10th Feb. 1967 it may be pointed out that the copy of the application on record contains that it was filed at a time specifically stated by Laxley Mohan Mahur that he was the owner



a handwritten document in Bang Chandra's (A/R) FPO Lab 2711 and Kama Vikasa Prastha's case (A/R FPO Dinesh 1101) Supra on which the learned single Judge has placed reliance.

15. The issue of whether Lab (A/R) FPO Lab 2711 and Hindustan Comvertison Co. (A/R 1967 SC 286) Supra relied on by the learned court for the appellants are distinguishable on facts. In Mukherji Lal's case (Supra) a carbon copy of the receipt for such services and materials on it was not found admissible under S. 45 of the Evidence Act. It was held that the whole of the document could not have been made by one uniform process and it could not satisfy the requirements of S. 45 of the Evidence Act. In the Hindustan Comvertison Co. case (Supra) the dispute was whether the document filed was a typed copy of the receipt. The main circumstance relied on by the appellants was that the document was a typed copy of the receipt under the printing of their works under S. 192 of the Indian Evidence Act and this should have been acted upon by the Court. On the other hand, a was considered on behalf of the respondent that what had been filed was a carbon copy of the receipt and not a typed copy thereof and therefore it would not be acted upon. The Punjab High Court accepted the explanation of the respondent and all that it had said in that behalf was that it was not a typed copy of the receipt and it was verified as correct copy of the receipt in 27th May 1944. The Supreme Court ruled this unanimously the Punjab High Court had not considered what exactly the words signed copy of the receipt means and held upon 7 of the last report is under —

"We accept their statement and are of the opinion that no long answer to the question of the admission or dispute as to the copy of the receipt filed in Court and it shows that the point argued as to the nature of the receipt or contents of the copy of the document would be a signed copy of the receipt. It would in such circumstances be immaterial whether the admission or dispute put before the court pertained to the copy or the receipt. Before giving the copy of the receipt. Thus turning to the document we find that it begins with the words now I hereby acknowledge a true copy of the said receipt which is as follows and this is signed by Sir Datta Bhawan, the Upran. There follows the copy of the receipt. At the

end we find the words contained in correct copy of the receipt in 27th May, 1944, under which appears the signature of Sir Datta Bhawan, the Upran. Clearly therefore the document filed is a true or correct and full reproduction of the original receipt and it bears the signature of the Upran Sir Datta Bhawan and thus is a signed copy of the receipt."

16. It was not a case of several identical documents being simultaneously executed. In Bang Chandra's case (A/R FPO Lab 2711) Supra the Calcutta High Court was dealing with copies. In the present case document Ex. P 1 cannot be said to be a copy, but the issue is original because it contains the signature of the witness and standing witness. Thus, both the cases relied on by the learned court for the appellants are distinguishable on facts. As this place we may point out that where a document is typed and a carbon copy is also taken and simultaneously the first signature is in carbon printed form as the original and the carbon copy is the duplicate or copy. The well Ex. P 1 is a typed carbon copy. There must, therefore, have been its first impression. It is an opinion it is apparent that it is in this sense that the words original and duplicate or copy have been used with reference to the qualifications with, therefore, on the facts and circumstances of the present case. It cannot be said that the handwritten document Ex. P 1 is a copy as the latter held it is an original document. Therefore, we reject the argument that it was not admissible as evidence under S. 45 Evidence Act.

17. There is another weighty reason to reject the argument of the learned magistrate the appellants on the question of admissibility of the document Ex. P 1. The reason is that the document was introduced as evidence without any objection. It is a very well settled rule when the document has been introduced as evidence, it is not open to the appellants now to object to its admissibility. The proposition of law itself amply support from the decision of the Supreme Court in the case of *Hindustan Refractories S. Prasad* (1952) 1 SC 59 (A/R 1952 SC 604) as well as from the decision of the Privy Council in the case of *Rajagopal Krishna Rao* (A/R 1924 PC 110).

18. So far as the existence of the well is

examined, vehemently held that it fulfilled the requirement of S 65 of the Succession Act and it is not necessary to prove it. It will suffice to say that there is considerable evidence that the testator was in perfect lucid state of mind and body on the date of execution of the will. It has also been proved that Miss Prasad had been possessing and using without difficulty, in her father's lifetime, the sum of Rs 1000/- from the will. Ex P 1 shows the Division from half-sister's and/or has been performed as on and controlled by the testator and the two sharing - shares on page 1. Clause 2 there are certain corrections and amendments which are not only controlled by the testator but by the two sharing - shares with her. Under these circumstances we are fully satisfied that the finding of the learned judge is correct and the testamentary document Ex P 1 is a valid and legal document and is not void for any reason or otherwise.

(F) Then relying on the observation made by the Supreme Court in para 30 of the report in the case of *M. Venkatasubba Iyengar v. M. Ramaswami*, AIR 1958 SC 441 and para 15 of the report in the case of *Mani Chandra v. Chandra Reddy*, AIR 1965 SC 204 the will in dispute was executed on the ground that Lalliy Mohan acted in the absence of witnesses and he was present in the house when the will was executed. Initially the appellant was deprived of her natural right to object the property of her father. In the light of the fact that the will was executed in the absence of witnesses, we are satisfied that there was no fraud or coercion as well. It has come to the evidence that the testator of the will, Sri Miss Prasad had one son and one daughter namely, Lalliy Mohan and Seta. She made Devi, without willpower. It has also come to evidence that the wife of Miss Prasad died in the year 1944 and he was living in his house, alone and was looked after by the appellant who was living with him along with his children in one of the concerned three houses of Miss Prasad. It is also now proved that Lalliy Mohan was present in Kanpur and he was living with his family there. Therefore it cannot be said that Lalliy Mohan had any undue influence over the testator in executing the will. The facts and circumstances of the case suggest that the person who executed the will for the appellant had got proper opportunity to influence the testator that

Lalliy Mohan. He could not stop his father from passing to his house in Kanpur. Miss Prasad Prasad P 10/1 has clearly stated that when the will was executed Lalliy Mohan was present in the room. There is no doubt, except the testator and the two sharing - shares when the will was executed. Miss Prasad was an old man. He himself could not go to call the witnesses. Under these circumstances, on the execution of the will, calling the attesting witnesses by Lalliy Mohan and his presence in the house - effect adversely affect the will. The testator has given only Rs 1000/- in the shape of bonds in the appellant and all the remaining property to be her son. The evidence regarding his daughter from the property and very well satisfied in the court. P 4 of 4-1981 whereas he has clearly stated. This was my house to go to my son or even out of his last last descendant who according to Hindu Shastras and my son was not allowed to perform Hindu religious rites Prasad for the peace and welfare of the soul of the deceased testator. It appears that the services rendered by the appellant in her father, he has not given her anything in his other property that may be sufficient for the appellant but the Court cannot help it.

(H) After careful scrutiny of the evidence on the record we are fully satisfied that there are no suspicious circumstances from which it can be inferred that the will Ex P 1 was executed by the testator in fraud of his wife and he was not in sound disposing mind. No undue influence was exercised by his son Lalliy Mohan. In our personal society it is not unusual for a father to give his whole property to his son. It may or may not be proved but the fact remains that generally people in the past of this country to do this to make their daughters to share of their sons. Although the appellant has set up a case that the will is a forced one, she has produced no evidence in support of the same. On the other hand, Lalliy Mohan has produced sufficient evidence to prove his case and remove all doubts. In our opinion, Lalliy Mohan's father signed and was taken away just in the execution of the will which contained substantial benefit to him. Therefore, Courts cannot refuse granting probate as held by the Supreme Court in the case of *Mani Chandra v. Chandra Reddy* (AIR





over the premises in issue. It was asserted that the property belonged to a mosque and the relationship of landlord and tenant did not exist between Chikonyi Lal and the two defendants. It was also pleaded that the shop was not constructed in the year 1969 and was purchased by the plaintiff on P.P. Act No. 13 of 1973. The action, according to the defendant plea, was void.

5. Chikonyi Lal's son, Ravi Kishan, who stated to be the plaintiff as Chikonyi Lal, appeared as a witness at the trial. He appeared as P.W. 1. Chikonyi Lal did not appear at the trial, but because according to Ravi Kishan he was very old and not capable to do so. Two other persons were produced as witnesses by plaintiff Chikonyi Lal. Premnath Islam appeared himself as a witness. He also produced some other witnesses including a third witness agent.

6. The trial Judge dismissed the suit. He held, firstly, that it was not proved that Chikonyi Lal was the owner of the disputed shop being purchased in through sale deed (Ex. 1), secondly, that the rent was fixed, it produced by the plaintiff was not admissible in evidence as it was not a registered document, so that the relationship of landlord and tenant was not established between the plaintiff and Islam, the defendant and that the oral evidence was not such which could be believed in that respect. The trial Judge also held that the disputed shop was constructed long before the year 1969 and it was, therefore, covered by the plaintiff purchase of P.P. Act No. 13 of 1973. Further the mortgage, transferred because it did not terminate the tenancy of Islam.

7. Chikonyi Lal attacked the decision of the trial Judge on various points (S. 25 of the Provincial Small Cause Courts Act). The appeal was allowed by the 1st Addl. District Judge, Indore District by an order dated April 23, 1980. The case has been remanded to the trial Judge for fresh disposal in accordance with law. It is this decision which has been attacked by Islam on the present application.

8. Sri S. A. Shah appearing for plaintiff Islam, has urged that it was not open to the Addl. District Judge to interfere with the findings of fact recorded by the trial Judge while issuing the order under S. 25, actual

law, done by him. Further, that the decision of the trial Judge on the question whether the relationship of landlord and tenant existed between Chikonyi Lal and plaintiff Islam, was normally a finding of fact on the question being there asserted in favour of Islam was not open to scrutiny or revision by the Addl. District Judge.

9. A certified copy of the judgment of the Addl. District Judge had been filed along with the writ petition. A perusal thereof shows that the learned Judge has not himself expressed the evidence on record, nor has he rendered any conclusion thereon based on appreciation of evidence submitted by parties. Judge. What the learned Addl. District Judge has done is to examine some aspects of law that which, according to him, the decision of the trial Judge suffered and has then directed the matter to be re-adjudicated by the trial Judge in accordance with law.

10. In *Ravi Shankar v. Rao* (AIR 1961 SC 686) the Supreme Court, while dealing with the scope of S. 25 of Delhi and Ajmer Rent Control Act special with approval the observations of Sir James C.J. in *Ball and Company Ltd. v. Western Banking* (AIR 1938 Bom 1119) regard to S. 25 of the Provincial Small Cause Courts Act. It is submitted, the observations are to the effect that the decision of facts involving in law would not be interfered with except on serious error of law some of which have been pointed out in these observations. In the case before the Supreme Court, the learned single Judge of the Nagpur High Court had substantiated his own decision for the concerned defendant one of the two Courts below on the question as to when the sub-tenancy of one Dr. Jain had commenced. The same statements were quoted by the Supreme Court in paragraph 7 of their judgment in *S.A. Handal v. Ash Hingray Chhotwari* (AIR 1969 SC 134) while considering the scope of the power contemplated by the law proviso in S. 25, of the Provincial Rent Control Act.

11. In *Laxmi Kishore v. Har Prasad Shukla* (1979 All WC 794) a Division Bench of the court speaking through Justice Chatterjee C.J. after referring to the Supreme Court decision in *Ravi Shankar's* case (AIR 1961 SC 686) expressed a part of the observations made by Revenue Chief Justice of Ball and Company

case A-88-1836. Rule 23a. Essentially, the Division Bench observed in paragraph 19 that the court deciding a motion under Rule 23, Prothonotary Small Cases Court Act, had to merely state that the trial court's decision or order was according to law, and that a wrong done means harm resulting a damages according to law. Later in paragraph 20 it observed that when the reviewed court finds that a particular finding of fact is according to an error of law, it has power to put such order in the nature of the case required, for a law is jurisdiction to restrict or regulate the damages in order to determine an error of fact is itself. Further, it is within the power of the court adequately without a finding on a particular issue of fact it should send the case back after having done proper justice.

10. The principle laid down in these cases is by now fairly settled and in every case the question that is to be examined is whether a reviewing or deciding the reviewing court has transgressed the limits set for it. The fact that the trial court has a recorded finding upon an evidentiary objection shows the trial judge acted in by not taking any consideration material evidence on record, and that the reviewing court is not such that finding and require the trial court to go into the matter without its assistance with law. This principle was accepted by this court in *Boonin v. Boonin*, 1. In *Adair v. Green* Judge "National, 1980-1. *Adair v. Green* (National) by the Supreme Court of Appeal (Pratt) 1st. Appeal (Dev.), 1984-1. *All. Rev. Cas. 577*. 1984 All L.J. 198.

11. The Adair District Judge found that while discussing the question of the relationship of landlord and tenant between C.Moody, Lai and prosecutor the trial judge had given no reason a basis for accepting oral evidence produced by the plaintiff. It appears from the decision of the trial judge of which recorded copy has been filed along with the writ process, that after stating the view that the oral evidence could not be taken into consideration it was an independent document the trial judge proceeded to hold that the oral evidence in the case was not enough to establish the case of C.Moody, Lai and that was the reason. Why was the oral evidence not sufficient for this conclusion has not been indicated in the judgment by the trial judge. What he says is

that plaintiff C.Moody, Lai did not appear in the witness box. Apparently an adverse inference was drawn by the trial judge. No statement of the plaintiff's testimony that the case of C.Moody, Lai, namely, Ravi Kishan, who appeared as a witness in the case, clearly stated about the matter with C.Moody, Lai was not produced as a witness in the case. This matter was not considered by the trial judge at all. In fact, apart from a reference to Ravi Kishan being P.W. 3 in the case there is hardly any discussion of this evidence to be found in the judgment of the trial judge. It was open to the trial judge to have refused to accept the testimony of Ravi Kishan if it was necessary for his decision to be in accordance with law that he should have considered his evidence. Thus, the testimony of Ravi Kishan was a material piece of evidence on the record of the case cannot be brushed by the reviewing court clearly it means in the plaintiff not receiving a fair trial at the hands of the trial judge.

12. The trial judge held that no account of the experience, the case records. It could not be looked upon as a trial. This was a material error in the trial judge's judgment. The trial judge, which is not completely responsible under S. 407 of the T.P. Act, and the reviewing court for the reasons given for the determination of the nature of possession of a person and to be a tenant. The legal position is well settled and if a reviewing court is required, he found in a recent Division Bench decision of the Court in *Barid Ahmed v. Sarat Kumar*, A-88-1836-184. Here are referred to a large number of earlier decisions of the Court out of the Supreme Court.

13. It was accordingly considered by the Division Bench that the trial judge had erred in not finding that plaintiff C.Moody, Lai was not the owner of the property, legal error of law, in the finding about the relationship of landlord and tenant between him and plaintiff defendant of no consequence. The decision affirmed by the court was therefore wholly upheld. The substance of the decision is that in concluding a conclusion about the ownership of the property, which the trial court could do so, it was necessary to determine if P.W. 3 (Ravi Kishan) has been completely overlooked, it is not necessary for me to refer to that portion of his testimony which relates

to the questions of ownership as I was inclined to uphold the notion of consent and my observations made by me may result in prejudice to other parts. The evidence may not have been taken better with the trial judge who, by, in the course of his conclusion on the question of the ownership, drew heavily on the circumstance that the owner of the evidence (the state) does not respond to *Supra* Probahe and that it was not established that the state did not intend to the things dispute. If the trial judge had only asked to go through the statement of P W 3 Hans Kuhn and then all P W 2. Asked Summary Photographs he could have, after also, found that *Supra* Probahe was the owner Hans Kuhn and that there was material connecting the state did with the things in dispute. He may not have accepted the evidence but there was no indication for him not to have considered the evidence already from clearly relevant.

24. The decision recorded by the trial judge in the above circumstances was rightly held by the Adm. District Judge to be not in accordance with law for purposes of S. 25 of *Prisoners' Remission Cases* Act. The Adm. District Judge intended no maintenance of the existing state of the law and directing reconsideration of the case by the trial judge in accordance with law.

25. In conclusion, the petition fails and is dismissed, but the petitioners directed to bear their own costs of the Court.

Prisoners' Remission

1999 ALL 1 1 489

A. S. SUDHASTHANA AND

R. P. SUDHASTHANA

Anne-Marie Trepoigt, Prisoners' Remission of Terms and other Remissions

Habeas Corpus Pet. No. 1712 of 1994. Dr. 1-1-1995

261. National Security Act (NSA) of 1980, S. 3 — Law and order — Meaning of — Specified individuals targets of attack — In case of the grounds against detainees publicly in large involved in state target of attack — Cases of attack personal immunity — Held, grounds

do not relate to problem of public order but are problems of law and order

(Para 18)

262. National Security Act (NSA) of 1980, S. 3 — Ground of detention based on FID units in, 264 and 265 IPC — Grounds relating to law and order or public order

Where the ground of detention was based on a last information report made by the complainant under Ss 264 and 265 IPC according to which the detainee had called upon the complainant at his house with intention to have unlawful possession and ownership over the petrol pump owned by the complainant and obtained his signature on a stamp paper that was kept in evidence as the point of view and had obtained complainant that he would take possession of the petrol pump the next morning and the detainee was arrested in a private house and not in public place and the target of detainee was also a single individual i.e. the complainant and no other order was involved therein it was held that the arrest was necessary to effect the purpose of law of other orders and was therefore, a problem of law and order and not the public order (Para 20)

263. National Security Act (NSA) of 1980, S. 3 — Public order — Meaning of — Ground of detention relating to security by which detainees along with an associate committed murder of a person in a shop in unpopulated human nature of the detainee — Assassination of single individual on account of security and had no result on local community or public in large — Ground has no relation with public order — Habeas Corpus Petition No. 1712 of 1994, Dr. 1-1-1995 (All) (P), 1st (1995) (Para 21)

264. National Security Act (NSA) of 1980, S. 3 — Law and order — Meaning of — Detainees and associates stopping car of complainant and firing in house and lawlessness — Specimen case target of attack getting arrested and dying — Ground relates to law and order and not public order

Where the detainee and his associates stopped the car of the complainant and fired at him and his associates started in the car and in a matter of chance a specimen a boy of the house got arrested and died who was not a target of attack nor any other member of the common public was made a target and it was



may and a few of the Bania community. This led to the police station. A serious case was investigated due to this incident. The people were then arrested and interrogated. The public order was disturbed. This ground relates to the first information report made to Gurm Prakash Sharma at Police Station Phudhaura on the basis of which a case was registered under Sec 147, 148, 149, 201 and 202 I.P.C. at Crime No. 68 of 1980. This offence is being investigated by the C.I.D.

(7) This on 24/10/80 at 8.30 a.m. at Khushab, an important business centre of district Bikaner, a case along with Man Shastar Tiwari, Kamlesh Kumar Pandey alias Tanna, Jay and Singh and Rajesh Singh, the members of a gang, armed with revolvers and other firearms, came on motor-cycles and, due to anxiety, fired on Harn Singh, who was riding on a rickshaw. Harn Singh died at the Medical College, Gurgaon, on 4-11-1980. Khushab and nearby areas were under a state of lawlessness due to this incident. Thus, the public order was disturbed. The ground is based on the case registered under Crime No. 222 of 1980 under Sec 147, 148, 149, 201 and 202 I.P.C. at Police Station, Khushab, on the report of Bala Singh. The case is being investigated by C.B.C.I.D.

(8) This on 25-02-1980 at about 1.00 p.m. the case along with Narinder Bhai, Man Shastar Tiwari and 20-25 members of the gang, armed with rifle and gun with the intention of capturing Magadhara Police Station and finally, during a riot involving Magadhara Police Station Police Station, district Bikaner, along the highway on, started harassing the people and the district and Man Shastar Tiwari, in order to increase their feud which resulted in the death of the Bania and others in Bikaner. Bani Kati and Mohanlal Bani Bhatia of the neighbourhood being by the district and his companions on the day of disturbance for police work. The police work was disturbed and the people were harassed. They started moving, later and others and the order was disturbed. Thus, the public order was disturbed. This ground relates to the first information report lodged by Bano Bhai at Police Station Phudhaura, district Bikaner, on the basis of which case was registered under Crime No. 149/1980 under Sec 147, 148, 149 and 202 I.P.C.

(9) On 10/10/1980 at 7.30 p.m. at Mohalla Khaton, Marwa Bhatnagar (Choudh of the

case of Gurdip Singh, the district called by Sir Vicky Kumar, district, resident of Mohalla Bhatnagar Police Station Khaton, Gurgaon, at the residence and with the assistance of his unlawful possession and ownership over the property possessed by Vicky Kumar, who is a Gurm, ground in Mohalla, Mohalla, along with the other case was disturbed Vicky Kumar to get paid and frightened him and stopped the operation on 6-7, under papers which were already written and prepared and the district also told Vicky Kumar that he paid going there belonged to the district and that the district would take possession in the case by 4-00 a.m. in the morning. The business community was under a state of lawlessness due to this incident. The businessmen closed their shops and the place of Gurgaon was disturbed. Thus, the public order was disturbed. The ground is based on the first information report made by Vicky Kumar at Police Station Khaton, Gurgaon, under Sec 294 and 294 I.P.C. registered at Crime No. 171 of 1984.

(10) On 4/11/1980, Rajesh Tiwari, son of Man Shastar Tiwari, attacked and committed the murder of one Bader, Ajit Singh at the Chhawan of Man Shastar Tiwari, who is a village Bhatnagar, Police Station, Narwar, A case under Sec 304 I.P.C. was registered at Police Station Phudhaura at Crime No. 14 of 1980 and was closed during investigation in case under Sec 201/202 I.P.C. On request and report provided in Narwar due to the murder and several circumstances, police and members of road held up and man, held up, place. The district administration was forced with a serious problem and group was the situation. P.A.C. was called. To prevent the occurrence of the murder and to suppress the opposition there and to give, fire in the people there, the district administration which was disturbed and public order was disturbed. The grounds are as follows:—

(11) This on the night between 3rd and 4th October, 1980 at about 3.00 a.m. the case along with the gang led by Man Shastar Tiwari, Gaurish Chander Pandey, Kirti Shastar Pandey, Kamlesh Shastar Pandey, Gaurish Shastar Pandey, Dera Chander Pandey, Ram Chander Singh, Indra Kaur, Pandey, Anoop, Dera Shastar Pandey, Sati Kumar Shastar, and 20 others, on 12 vehicles, armed with fire arms, entered the house of Gaurish Pandey

Singh with intention to murder him and his family members. Ganga Prasad and his family members raised alarm.

5. That there were many threatening letters to stop the oppression otherwise they would get whole of Nainitala town. S. 144 Cr.P.C. was in force in Nainitala during that period and dissemination of threatening letters was prohibited. The district and his gangmen did not care for that and created terror and disturbed the public order. Case stated lodged a report in Police Station, Nainitala, under Ss. 147, 148, 149 and 307 I.P.C. and the case was registered in Case No. 198 of 1964.

(b) That on 4-10-1964 at about 7-30 p.m. the dewan along with his gang leader Hanu Singh Thakur and Kripa Shankar Pandey, Krishna Sharma, Harish Pradhan, Dayaram, Dulari and Subodhi, his gangmen armed with rifles and guns, entered the house of Mahan Singh resident of Sakarai, Police Station, Nainitala with intention to commit the murder. Mahan Singh escaped into the house of Kuldev Singh. The dewan and his associates took away Rs. 2,000. They threatened the family members of Mahan Singh would be killed if the reported was not done in 4-10-1964 murder case.

6. A case was registered in Case No. 181 of 1964 under Ss. 147-149 and 307 I.P.C. in Police Station, Nainitala on the report of Mahan Singh.

(c) That on 5-10-1964 at about 5-45 p.m. Anandh Kumar, known as strongman, his wife and others the dewan along with his gang leader Hanu Singh Thakur and Ganga Prasad Pandey, Durga Shankar Pandey, Chhotabhai Pandey, Anand Bhagwan and others associates armed with rifle, gun and non gun like, remained there in a group with intention to commit the murder and level indiscriminately on him. He immediately saved himself by hiding in the roof. The crowd consisted of 10 persons and mostly males. All were arrested by the dewan and his gang. Thus the public order was disturbed.

7. A case was registered in Police Station, Nainitala in Case No. 183 of 1964 under Ss. 147, 148, 149 and 307 I.P.C. on the report of Anandh Kumar himself.

(d) That on 5-10-1964 at about 7-45 p.m.

when Ganga Prasad was going towards village of Bhaitoli to see the dewan along with other associates, all his gang armed with rifles and guns in 8-10 p.m. a firing coming from the side of Sakarai saw him and with intention to commit the murder fired at him. He immediately saved himself by hiding himself.

8. On the report of Ganga Prasad, a case was registered in Case No. 177-3 of 1964 under sections 147, 148, 149 and 307 I.P.C. in Police Station, Nainitala.

(e) That on 10-10-1964 at about 4-15 p.m. the dewan along with the members of his gang armed with rifles, guns and non-guns fired on 5-10 p.m. a firing coming from the side of Sakarai Singh a human being, to make a case to make a report about the facts created by the dewan and his associates in regard to the murder of Anand Singh and was away. He somehow saved his life by hiding. There were was disturbed by this incident and the people were frightened. A case was registered in Case No. 184 of 1964 under sections 147, 148, 149 and 307 I.P.C. in Police Station, Nainitala.

(f) That on 10-10-1964 at about 12-15 p.m. the dewan along with his gangmen Kripa Shankar Pandey, Krishna Sharma, Mahan Pandey, Ganga Prasad, Anand Bhagwan, Anand persons driven in a programme with rifles and guns arrived at the gate of the house of Mahan Singh Thakur and called for name and threatened to kill him and on the apprehension of the dewan Kripa Shankar fired two rounds on Mahan Singh who saved himself by hiding. There was created a whole of Nainitala by the incident.

9-10. A case was registered in Case No. 186 of 1964 in Police Station, Nainitala on the report of Mahan Singh under Ss. 147, 148, 149 and 307 I.P.C.

11-12. On the afternoon grounds the District Magistrate, Garudpur was telegraphically notified that the dewan was likely to indulge in activities prejudicial to the maintenance of public order local a necessary to preventively detain him and passed the afternoon detentions order.

13. While challenging the afternoon order

the learned counsel for the State has submitted? —

Q. If the representation was denied after consultation being without there being any explanation for the same?

A. If the Government, on which the decision order is granted, all order to forward order and not to publish order, and

Q. If the material and relevant documents which were relied upon by the decision authority to arrive at the subsequent conclusion have not been supplied to the State, and, therefore, the State has been deprived of its right of making effective representation against the decision order?

A. In order to decide the first point, we have to consider the following circumstances:

15. The representation of the State is dated 17.12.1964. The representative counsel affidavits filed by Sir Gopal Trepassee, Upper Division Magistrate at Comilla District, S. D. P. Card No. 10000, Comilla, on behalf of the State Government submit in paragraph 2 of the said affidavits that the representation of the State was received by the State Government on 19.12.1964 and the same was rejected by the State Government on 28.12.1964. According to the affidavits of Sir David, members of the District Magistrate Comilla were asked on the same day as 19.12.1964 and were received by the Government on 20.12.1964 along with the letter of the District Magistrate Comilla dated 12.12.1964. In the affidavits the members of the District Magistrate Comilla denying authority were necessary while considering the representation. In the affidavit supplementary affidavit, it is stated that the representation of the petition was received at various levels in the Secretariat and was rejected by the State Government on 28.12.1964. Between 24th and 25th December 1964 two days i.e. 24th December (being Sunday) and 25th December (being Monday) were holidays. Thus the Government made these days at the Secretariat fixed to decide upon the representation of the State, it would have been better if the representation filed on behalf of the State Government through the affidavits of Sir David were more specific as to what constituted the representation and in what

level but in the circumstances of the present case we are of the opinion that the late failure by the Government in deciding the representation cannot be said to be questionable nor it can be said that there was sufficient delay in deciding the representation of the State. Taking a practical view of the situation, material is found to appear between the passage of the representation, reconsideration and decision process. No hard and fast rule as to the minimum of time can be laid for the appropriate authority for such consideration but the time taken should not be the mark of quality, expediency, courtesy or lethargy in any way. In the present case, the members of the decision authority, as we have already held that the time taken at the Government level was not unreasonable. On behalf of the State, evidence has been placed on a decision of the District Court at Dhaka, Paterson v. State of U.P., AIR 1964 SC 1126. In that case, the representation of the State dated 2nd June, 1960 was received by the State Government on 10th June, 1960 but for two days no action was taken in connection with it on the 16th of June, 1960. Counsel were called for from the various authorities with regard to the allegations made in the representation and such comments were received by the State Government on 16th June, 1960. On the 17th of June, 1960, the State Government referred the representation to its Law Department for its opinion which was furnished on the 18th of June, 1960. The rejection of the representation was ordered on the 24th of June, 1960. The case of the State was that the representative counsel the District Magistrate who were formulating their comments from 7th June, 1960 to the 12th June, 1960 and the representation was under the consideration of the Government for four days from 12th June, 1960 to 16th June, 1960. At the Law Department from 17th June, 1960 to 18th June, 1960 and then again under its own consideration for six days from 19th June, 1960 to 24th June, 1960. It was in such circumstances that Sir David observed that calling comments from other departments, seeking the opinion of the Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in matter of such a kind and



Reliance has also been placed on a decision of the Court in *Shigendra Kumar Sharma v. Superintendent, District Jail-1, Agra* (1984 Cr. 11700) wherein the representation of the detenu was placed before the Home Secretary on 26-5-1984 which could not be placed before the Chief Minister on 26-5-1984. There was an explanation as to why this representation which took thirteen days in travelling from where it occurred to the Home Secretary, remained lying for further four days at its table. The pendency of that representation at the Secretary as of the date from 1-6-1984 to 26-5-1984 had not been pushed and there had been no delay whatsoever of time at some stage of that journey and stay there. It was held that there was neither delay in deposit of the petitioner's representation which could not be placed. Reliance has also been placed on a decision of the Supreme Court in *State of Bihar v. State of Bihar AIR 1981 SC 109* wherein there was merely eight days delay in considering the representation of the detenu and therefore their Lordships held it to be no more delay in the circumstances of this case. The facts and the circumstances of the case stand apart from the facts and circumstances of the instant case. In the present case there has been no delay at the end of the District Magistrate and at the Secretary level. Including the two holidays only five days time was taken for the detenus upon the representation of the detenu and taking a practical view we have said that the same delay at the Secretary level is not unreasonable. Thus the delay operation of the detenu is rejected as shown.

14. Before we proceed to examine the grounds of detentions with a view to find out whether they relate to position of law and order in public order it is necessary to point out that in paragraph 15 of the writ petition the persons has specifically asserted that all the cases are as a consequence of friction with the deceased Virendra Prasad Shukla. This assertion has not been denied by the District Magistrate, Sri S. P. Saxena or his junior officers. The representation of the Agency is Annexure F to the supplementary affidavits of Parsh Bahadur. In para 10 of this Annexure F the detenu stated that Virendra Prasad Shukla had tried to commit his murder and the report in this regard was

lodged at Police Station Bhadrangpur at Lucknow. In fact, the content that Virendra Prasad Shukla was arrested at Bhadrangpur Police in connection with this case. The identity between Virendra Prasad Shukla and the detenus is not denied. Ground No. 3 relates to the information report made by Ganga Prasad Shukla and registered at Court No. 66 of 1982 at Police Station Farrukhabad district Ghazipur. According to this report the detenu and his companions were shot up indiscriminately by Virendra Prasad Shukla and his associates namely Ganga Prasad Shukla and Haseen Beg who were travelling in the car of Virendra Prasad Shukla.

15. Annexure F to the supplementary affidavits filed by Parsh Bahadur is a first information report lodged at the detenu on 4-10-1984 at 4:30 p.m. at Police Station, Vardhola, Ghazipur under No. 187 188 189 and 207 U.P.C. against Akhlesh Singh, Kalyan Singh, Gur Prasad Singh, Dinesh Kumar, Vikram Singh, Shambhuwar, Ramswar, Ramcharan, Ramswar, Ramswar Lal and some others. Annexure G to the same supplementary affidavits is a second report made by Jai Ganga Shukla, Panchayati in Police Station Vardhola on 10-10-1984 wherein Virendra Prasad Shukla, Jai Ganga Shukla, Santar, Son Singh, Shro Bahadur Singh, Dushin Singh, Ram Singh, Tara and Janyal Singh have been made accused. The Ganga Shukla Panchayati in its account of detenus, as mentioned in Ground No. 1 and 7 of the detenus order. Annexure H to the supplementary affidavits contains the grounds of detentions against Akhlesh Singh whose detention order is based on the first information report lodged by Ganga Shukla Panchayati and the detenus in these grounds, Kalyan Singh, Anwarul Islam and Gur Prasad Singh have been mentioned as associates of Akhlesh Singh. Grounds Nos. 1, 3, 7, 8, 9 and 10 relate to these persons. Virendra Prasad Shukla and his associates, namely Akhlesh Singh, Kalyan Singh, Gur Prasad Singh and Anwarul Islam are thus mentioned as persons who are

16. In Grounds Nos. 1, 7, 8 and 10 the specified individuals, namely Gur Prasad Singh, Anwarul Islam, Kalyan Singh and Akhlesh Singh are the targets of attack. In case of these persons, the police at large is involved or is made the target of attack. The

issue of attack is personal animosity. In this opinion, these grounds do not reflect a problem of public order. They are problems of law and order.

19. Ground No 6 relates to two information reports made by Mahan Singh in Cases Nos. 101 of 1984 under Sec. 143 B.P.C. and 180 B.P.C. in Police Station Nandiana where he is alleged that the distress along with his associates all took place and got entered the house of Mahan Singh at 2.30 p.m. on 4-10-1984 with intention to commit the murder. Mahan Singh escaped into the house of Kalyan Singh Singh. The distress and the murder took place on 2-10-1984. According to Mahan Singh and his counsel, the family members of Mahan Singh would be killed if he appeared as a witness in the Mahan Singh murder case. Mahan Singh was characterised as his readiness of co-operation with police of force. The distress was not entered solely in public place but in his own residence. In our opinion, the actual requirement is difficult to trace steps of the life of the community which characterises a problem of law and order and has an impact on public order. Regarding the ground that report No. 30 had been submitted on 11-10-84 as stated in paragraph 3 of the supplementary representation of Preet Bhatia. Photocopy of the representation in this respect is attached to the test supplementary representation submitted.

1. The test had report has been accepted by the C.M. Goudpur much before the distress case was passed. There is a clear view that investigation, the police found that the allegations made by Mahan Singh in the two information reports were not genuine. How could the District Magistrate form the necessary satisfaction on the basis of such a report. He therefore, therefore, was based on a ground which was untrue.

20. The Ground No. 4 is based on a false information report made by Vinu Kumar in Police Station Kottah Goudpur under sections 144 and 180 B.P.C. registered in Case No. 112 of 1984. According to the report, the distress called Vinu Kumar Aggarwal in his house with intention to have unlawful possession and ownership over the property owned by Vinu Kumar. However, the report on 4-10-84 report that Vinu Kumar was not, as the police of force. The distress also said Vinu

Kumar that he would take possession of the good good pump the next morning, at 4-10-84. The distress was submitted in a private house and was in public place. The report of distress is also the single and that is Vinu Kumar Aggarwal and no other member involved in the case. There are, therefore, has no prima facie appearance of the report of Mahan Singh and no disturbance a problem of law and order and not the public order.

21. The second ground related to the fact by which the distress thing was the accused committed the murder of one Mrs. Raj Singh who was taking tea and they were killed in an important business place, of Goudpur. The murder of murder is serious, as stated in the ground itself. In Mahan Singh Case No. 112 of 1984 decided by a Full Bench of the Court on 11-10-1984, it has been observed.

Murders committed on individuals in a case on account of personal animosity may often be individual, while if a serious, malicious attack is made on some form or concerned, how the peacefulness and well maintained peace come based and continued with both would damage public order and tranquility. How much has been made on a single, this is not an assumed case. It has to be made on the local community or public at large. The ground therefore, has no relation with public order.

22. As regards ground No. 3, we have previously stated that Vinu Kumar Singh is alleged to have the distress at Luthian. The society alleged in ground No. 1 is stated in Vinu Kumar Singh and his associates. It is very clear that the distress and his associates stopped the use of Vinu Kumar Singh and his associates used in the case.

23. It is just a matter of chance that a statement is kept of the house got signed and that. He was not a member of the house, but any other member of the house could not be a member and is not alleged in the ground that the distress caused so much trouble in the locality that therefore, they were prevented from following their usual as members of the house. In Singh Bhatia v. State of Punjab (1981) 1 A.R. 1971 SC 2026, the Full Bench Supreme Court has observed.

Disturbance in public places like a public



Ground No. 3 that the election work was completely falsified and the people were terrorized and scared among others and that Ground No. 2 and Ground No. 1 exist to maintain that occurred in districts Iloilo and Iloilo respectively. The reports reflect very serious conditions in before the deposing authority, unless placed by said act. Obviously, states two reports and the informal report of the grounds had been taken from the report of the Senior Superintendent of Police, Cordero. If the said report of the Senior Superintendent of Police, Cordero, did not contain the informal two reports and the fact that the people were terrified, the greater extent that stops, the election was falsified and the whole work was terrorized due to the activities of the groups, does evidently it is like a case where there is no material to form the above statement. A reading of all the grounds will show that the matter of terror has been presented as a fact that is not a mere statement of deposing authority. This is not because authority is not possible in fact that the deposing authority could have personal knowledge about these facts and matters as they were in various places away from the city of Cordero. In addition, follows that the factual statements regarding the state showing about these stops, election being falsified, people having the better condition, the whole was terrorized and the people were peacefully have been contained in the report of the Senior Superintendent of Police and the deposing authority did rely upon the same. It is very strange that the report of the Senior Superintendent of Police was not relevant and it was not relied upon by the deposing authority. The report of the Senior Superintendent of Police in its nature contains a very material witness and a statement which in the circumstances of this case contained the facts concerning the grounds of deposing. Since the report has not been supplied in the deposing the valuable fundamental right to make an effective representation, is guaranteed under Art. 13(1) of the Constitution has been reached away.

18. In the case of *Kipah Nam-Tan v. Sison of Pinar Del Rio*, AIR 1953 SC 102 the Philippine Court explained when it stated by "grounds on which the order is made" in the course of the first trial upon the deposing authority

and the corresponding right according to the deposing under Art. 13(1) of the Constitution. The Court said that in that context the expression grounds, does not merely mean, stated and the reproduction of grounds of statements of the authority in the language of Art. 13, nor is an assumption or stated as a fact statement of fact but nothing less than of the basic facts and materials which influenced the deposing authority in making the order of deposing and that is the plain requirement of the first subpart in Art. 13(1) of the Constitution.

19. Again what would be comprised in all the basic facts and materials. As has been discussed by the Supreme Court in *San Jose Chaves v. Union of India*, AIR 1960 SC 1063 by holding that the deposing statement and other materials related or related upon as the grounds of deposing by the deposing authority or grounds (a) no subjective satisfaction given or presented and become part of the grounds of deposing by reference and the right of the deposing to be supplied relevant documents, materials and other materials there directly as a necessary corollary from the right ordered under deposing to be afforded the fullest opportunity of making a representation against the deposing. Deposing when the deposing not violate the latter's right to making fully relevant.

20. Thus it is clear that the expression does not merely mean merely the report of the grounds of statements of the deposing authority but presents all the basic facts and materials which influenced the deposing authority in making the order of deposing. Again all the documents, materials and other materials referred to or relied upon in the grounds of deposing by the deposing authority as relevant in its subjective satisfaction given or presented and become part of the ground of deposing by reference.

21. Thus, the basic facts supply the relevant materials containing the basic facts forming the grounds of deposing by the deposing authority in the deposing, the order of deposing.

22. In the result, the present was granted writs and we allow the same. The respondents are directed up to keep Amor Mena Trujillo deposed under deposing act.

larger in pursuance of the directions order dated 17-11-1984 passed by the District Magistrate, Gorakhpur under S. 3(2) of the National Security Act and affirmed by the State Government. It is made clear that this petitioner's detention is required under some other authority of law, the order passed by us shall not stand in the way of the same.

Prisoner allowed

1986 ALL L.R. 587

S. D. AGARWAL J.

**Saurabh Singh Pragnas Devi, Saurabh Singh and others Respondents**

**Writ Pet. No. 54 of 1985 (D. 17-11-1984)**

**Constitution of India, Art. 22(1) — Representation of the People Act (1950), S. 19(1)(a) — Teachers Higher Secondary School — Not disentitled from exercising election in Legislative Assembly**

A teacher serving in a Higher Secondary School in L.P. to which the Immediate Education Authority had referred applicants for election in this L.P. Legislative assembly. The consent of the State Government through its standing order on the Commission of Management constituted under the Scheme of Autonomous District is inconsistent with the provisions of the Immediate Education Act or the Commission created under the D.P. Act of 1952 in so much as single person is in any conflict between the personal interest of a person placed in the position of teacher in a Higher Secondary School and his duty as a member of the Legislature and in this manner denies the central object underlying the statutory dispensation. The correspondence has been examined and is improper.

(Para 34)

**Cases Related Overruled Para**

AIR 1957 SC 4 23

AIR 1957 SC 214 1986-1 SCC 124

15-10-43 12

AIR 1946 SC 168 44

1946 Lab IC 1648 (AIR 1946)

AIR 1955 Delhi 141 (1975)

1984 ALL LJ 114 1984-2 SCC 384 AIR 1984 SC 196

40-41-47 13

1984 ALL LJ 203 1984-1 SCC 704 AIR 1984 SC 285

41 13

1984 ALL LJ 191 1984-1 SCC 261 AIR 1984 SC 176 AIR 198-SC 187

38

AIR 1984 SC 361 1984-2 SCC 55 AIR 1984 SC 391

41

AIR 1984 SC 1008 1984-2 SCC 102 AIR 1984 SC 1040

49

1984 Cr. LJ 1008 1984 ALL LJ 797

46

1984 Lab IC 1791 AIR 1984 Cal 124 (AIR)

28

AIR 1981 SC 407 1981-1 SCC 753

20-22 29

AIR 1981 SC 646 1981-1 SCC 402

71

1984 LPLT 500 1984 LPLRSC 521 46

1984 LPLRSC 726 (1984)

20

1980 AD LJ 8038 1980 LPLRSC 34 AIR

1981 SC 132

26

AIR 1979 SC 608 1979-2 SCC 489 29 23

AIR 1977 AIR 100-1001

26

AIR 1976 SC 666 1976-1 SCC 46 1976 Lab

IC 126

26

AIR 1976 SC 8713 1976 Lab IC 666

AIR 1976 SC 2383 1976-1 SCC 76

12-17 18 41

AIR 1976 SC 2668 1976-1 SCC 121

34

AIR 1975 SC 275 1975-2 SCC 253 11 71

AIR 1975 SC 645 1975-1 SCC 131 18 43

AIR 1975 SC 1007

11

AIR 1975 SC 1206 1975-1 SCC 426 1975

Lab IC 180

20 21

1971-2 SCC 879 1971 LPLRSC 134

13 24

AIR 1976 SC 1614

AIR 1981 SC 766 AIR 1981 Lab IC 1108

11

AIR 1969 SC 1008

12-16 17 18 42

1980-42 Cr. LJ 81 1971-2 SCC 34

11

AIR 1967 SC 1007

20

AIR 1964 SC 261

12-15 16 18 40

1983-25 Cr. LJ 306 (AIR)

71

AIR 1961 Cr. 195

52

AIR 1964 SC 102

12-16 18 17 19

AIR 1968 SC 164

20

AIR 1964 SC 163

42

AIR 1964 SC 163

18

197-3-4 Cr. LJ 10 (Allahabad Tribunal)

40

**Amek Ram for Pragnas S. S. Meen**

**and K. N. Tripathi for Respondents.**

**ORDER.** — This is an election petition

under Section 113 of the Representation of

the People Act, 1950.

3. *Chairman to the State Legislative Assembly Committee*, No. 41 Chairman College Intermediate Board, Bikaner notified under Section 197. Last date for filing nominations was notified by letter dated 19th February 1961 was the date for election at the constituency. The candidates could be submitted up to date 19th Feb. The poll took place on March 1, 1961. This was followed by counting on 4th March 1961. The respondent No. 1 was declared elected having secured 2086 votes, the next highest number of votes was obtained by the respondent No. 2 being 1070. The margin was of 1016 votes. The respondent No. 1 a former State candidate in the election of 1957 was. The petitioner asked to declare as the constituency has filed the election paper and he proved that the result of the election is to be as a candidate the returned candidate has been duly elected by the majority acceptance of the members of respondent No. 2. The respondent No. 2 was on the relevant date of nomination and election to be a teacher in the L.T. Grade in the Bikaner State College Intermediate College, Bikaner District, which according to the petitioner existed in office at public field under the State Government, as such he was disqualified from seeking election of the State Legislative Assembly in view of Article 191 (2) of the Constitution. The petitioner in paragraph 11 declares that the election of the respondent No. 1 is void and also that the respondent No. 2 in the previously elected.

3. The respondent No. 1 being a woman under petition she claims that the respondent No. 2 is an officer of public under the State Government or was on that account disqualified from seeking election or that the result relating to her has been materially affected due to commission of the respondent No. 2 being accepted.

4. Upon pleading the following issues were framed for decision:—

1. Whether the Mahara Singh (respondent No. 2) a teacher in the Bikaner State College Intermediate College Bikaner District held office of public under the State Government at the date of the nomination for election to the Legislative Assembly in 1961?

2. Whether the result of the election is to

be as a candidate the respondent No. 1 the returned candidate is materially affected on account of the commission of the respondent No. 2 having been accepted?

3. Whether in the event of non success of the respondent No. 2 was being accepted the respondent No. 2 would have been declared elected?

4. To what relief if any is the petitioner entitled?

5. Petitioner have not sought to adduce evidence and/or documentary in this case except that the petitioner has filed copies of certain Government Orders issued from time to time relating to the local board of school teachers.

6. I have heard learned counsel for the parties.

### Findings

Issue No. 1

7. Section 103(1)(a) of the Representation of the People Act, 1951 relied upon by the petitioner states to the effect of public to be such the election that the result of the election is to be as a candidate the returned candidate has been materially affected by the improper acceptance of any nomination. Article 191(2) of the Constitution has been relied on to the effect that a person shall be disqualified for being chosen and for being a member of the Legislative Assembly of a State

if at the date any office of public under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder.

8. For a number of other clauses of Part III of the Constitution contained in Article 103 (1)(a) it is held that the returned candidate was disqualified by law of Parliament. Article 103 specifies qualifications for election to Parliament. Clause (1) thereof which is relevant in the context is as follows:

A person shall not be eligible for election as Member if he holds any office of public under the Government of India or the Government of any State, or under any local or other authority subject to the control of any of the said Governments.



go on to answer in a similar conclusion.

14. Allied to this is the other aspect of the matter turned at the issue but which needs close consideration in view of its doctrinal importance to see that within the ambit of the Privileges that a President of the Union or a disqualification in respect of membership of the State Legislature on account of holding an office of profit under a local or other authority under the control of Government. In *Abdul Shakir v. British Chand* (A.I.R. 1958 SC 18) again, the appellant was appointed by the Government of India as a manager of a school run by a committee of management formed under the *Dugaiy Act*, 1954. It was contended for the respondent in that case that the Government of India had the power to appoint and remove a member of the committee of management as also the power to appoint its administrator in connection with the committee; therefore the appellant was holding office under the Government of India. This contention was rejected, the Supreme Court pointed out the distinction between "the holder of an office of profit under the Government" and the holder of an office of profit which some other authority vested in the control of Government. It was observed —

"To decide the Committee of the Dugaiy Endowment is to be appointed by the Government of India but it is a body composed with perpetual succession being under the full control of the Act. Members constitute the committee or the members of the committee are removable by the Government of India or the committee can make by-laws providing the financial powers of an employee/manager in case upon contract the members of the committee and holders of office of profit under the Government of India. The appellant is neither appointed by the Government of India nor is removable by the Government of India nor is paid out of the revenues of India. The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Governmental revenues are important factors in determining whether that person is holding an office of profit under the Government though payment from a source other than Government, itself, is not always a decisive

factor. But the appointment of the appellant does not state within that list.

15. *Smt. Abba Kismet* turned around appearing for the petitioner who argued the case with great ability and valour. She referred to *Changpanda* (A.I.R. 1954 SC 347) (supra) and said that this is in the favour. I lost no difference on principle but therein. Under consideration was the case of an auditor appointed under section 109(1) Companies Act, 1948 in a Government Company whereof 80% shares were held by the Central Government. The appointment of the appellant raised issue, with the Central Government and to also be removed from office. In the performance of her functions as auditor in the appellant's capacity as controlled by the Comptroller and Auditor General who himself, it was observed, is a holder of an office of profit under the Central Government. It was in fact of such permanent control, so relating to an appointee of Government as a Central Government understanding that the appellant was held covered under Article 161(1) of the Constitution showing that where the several elements the power to appoint the power to dismiss, the power to control and give directions as to the manner in which the duties of the office are to be performed, and the power to determine the question of continuance are all present in a given case, then the office is question holds the office under the authority is empowered? This was possibly inadequate and we shall see later, this does not meet the position in the present.

16. In *D. B. Guruswamy v. Abdul Khader Azmi* (1961 SC 74) the Supreme Court considered whether a resolution was in the line of control of the association papers are employed in a company owned by the Government was disqualified under Article 161(1) and 161(1a) of the Constitution. After discussing *Changpanda* (A.I.R. 1954 SC 347) and *Abba Kismet* (A.I.R. 1954 SC 18) (supra) the conclusion reached was that the mere fact that the Government had control over the Managing Director and other Directors as well as the power of issuing directions relating to the working of the company would not lead to the inference that every employee of the company was under the control of the Government. The principle enunciated, regarding a part



11) until for the resignation by Sri S. N. Misra assisted by Sri P. N. Tampi, meeting with decency and honesty is as follows:—

Thus, in the case of Misra as President or Vice President, the disqualification arose only if the candidate or his holding an office of profit under a local or any other authority under the control of the Central Government or the State Government, whereas in the case of a candidate for election as a Member of any other Legislature, no such disqualification applied directly to the candidate if the office of profit is held under a local or any other authority, under the control of the Government and not directly under any other Government. This clearly indicates that in the case of eligibility for election as a member of Legislature, the holding of an office of profit under a corporate body (like a local authority) does not bring about disqualification unless it is a local authority or under the control of the Government. The same concept of the Government over the authority having the power to appoint, dismiss or control the working of that office, employed by such authority does not disqualify the office-bearer being candidate for election as a member of the Legislature at the manner in which such disqualification arises in the case of persons claimed to be President or the Vice-President. The Company in the present case, according to the decision under the control of the Government and independent. No. 1 was holding an office of profit under the Company but in view of the distinction indicated above, it is clear that the disqualification laid down under Article 181(a) of the Constitution was not intended to apply to the holder of such an office of profit.

12) The question arises whether O. E. Pathak, former Director, Punjab (1975 SC 2264 (supra)) is relevant in the application of the present disqualification under the Employment State Insurance Scheme as to whether he held office of profit under the State Government. This was answered in the negative emphasising that actual control through real or influential authority (per J. speaking for the Division Bench observed) —

In our case Government-owned party donors and party leaders' control has the consequences attributable because the donor is put at the bar not by Government directly but through a prescribed process when the

Supreme Court takes presiding place. How powerful or remote is the relationship of the donor to the political Government is not the test under Government in the first instance. Government (1980 1980 SC 144) has highlighted this fact of the present instance control through influential authority (for the sake of Mohd. Waheed (1978) 1978 SC 121). The application submitted by Kar 1 was for five years in the Calcutta case, was not a Member of Government but a private practitioner, was not appointed directly by Government but by an official government in the recommendation of a committee, was paid remuneration of government official and the control over him as the scheme was vested not in Government but in an Administrative Medical Officer and Director whose position is not yet government, correct functioning of statutory rules. The donor power to remove him did not in Government even as he enjoyed the power to withdraw him at any time. The mode of medical treatment was beyond Government's control and the other two's private one. In sum, it is fair to hold that the present medical practitioner is not a firm figure but subject to direct dispositive control and rules of remuneration under the overall supervision and power of Government. While the relation being under the Government is a private nature is paternal benevolence, especially when the present donor is not related, the ruling in Kar which leads to and the respective position of holder of such an influential Municipal position who is an influential medical practitioner under an arrangement with Government which is in fact through the Director, the application of the disqualification under the Government in the present case, cannot imply a disqualification. After all, the present is the first instance in which there is substantial link with the end via the possible source of position to treatment medical practitioner or doing his duties as Municipal Pradhan.<sup>12</sup>

13. The Supreme Court considered this aspect over again recently in *Abhishek Kumar (2004) 4 SCC 1* (2004) 4 SCC 144 (2004) 4 SCC 144 in which the court noted that whether an Association or a body of persons is a Government body or not is not the test for disqualification. It was found that in the

employees under the respondent held an official post under a local municipality. The appointment of person in this category of post held in respondent No. 1 was to be made by the Commissioner of Municipality but this was subject to the confirmation by the State Government. He could be removed by the Commissioner upon subject to the sanction of the Government. He was paid out of the municipal funds which the Municipality was compelled to raise. The finding was that though Government received certain amount of revenue and expenditure the respondent was not an employee of the Government nor was he required to perform governmental functions for the Government. Citing the case of *Changchitra*, 148B 1994 SC 1249; *Joshi Shikhar*, 148B 1994 SC 1251; *D.R. Ganeshaiah*, 141B 1989 SC 544; *Maddur G.R. Padalath*, 148B 1994 SC 1238 these Lords have laid down the law:-

The true principle behind the provisions of Art. 302(1) is that there should not be any conflict between the Government and the municipality as a local member Government controls various activities in various spheres and in various instances. But to judge whether employees of any authority or body are officers under the control of Government between Government employees or not, or holders of office of profit under the Government, means and means of some of them be judged in the light of the facts and circumstances in each case so as to avoid any possible conflict between personal interests and duties. This principle was further clarified in the case of *Suresh Kumar Ray v. Imperial Gas Khan*, 141B 1991 SC 1005. There under *Ray* and *Ganeshaiah* judgments Art. 302 is stated called the House of Lords may be considered to provide for the control and sanction of any act under which the persons employed in it may execute and the performance thereof of the national and spread of epidemic diseases. After emphasising the facts of this case, the Court held that the main law that the legislature was approved Chairman of the Board of House Government would not make him a person holding an office of profit under the State Government. There the Supreme Court referred to the decision in the case of *Changchitra* (supra) *Joshi* (supra) v. *Appa Sankaran Anthurappa*, 171B 1997 SC 172. The Court in *Suresh Kumar Ray* v. *Imperial Gas Khan* observed @ 175B 1991 SC 1018 para 101: 141B

141B SC 1013 para 1014 as follows: 141B 1991 SC 1014 para 1013 para 1014: 141B 1991 SC 1013 para 1014:-

Once again it is to be pointed out that the Government does not give the respondent any duties or better perform his functions for the Government. To hold otherwise would be to hold that local bodies like Municipal Council perform their functions for the Government though in one sense the fact that they perform are governmental functions.

And in para 11 it was pointed out :-

In determination of the question whether a person holds an office under the Government such enquiry be initiated and judged in the light of the relevant provisions and the facts and having regard to the provisions of the Bengal Municipal Act. H.G. as extended to Durgam, the provisions of which have been set out hereinafter, are one of the options that the Government does not control, *govern* like respondent 1 and thus he comes to be an employee of the Municipality though his appointment is subject to the confirmation by the Government. He does not come to be an employee of the Municipal Council Authority or such or any other authority does not come to be an employee of the Government. Whether in a particular case it is so or not must depend upon the facts and circumstances of the relevant provisions. To make in all cases employees of Local Authorities subject to the control of Government holders of office of profit under the Government would be to obstruct the specific differentiations made under Art. 302 of the Constitution and to extend disqualifications under Art. 302(1)(a) to an extent not warranted by the language of words.

10. The preceding content has thus been held to be the degree of control the Government has over the concerned authority, the extent of control is the measure. The independence of the authority is not 100%. The degree of dependence on Government, be it financial aspect and/or financial aspect might be looked into as also whether the body is discharging important governmental functions. This would depend considerably on the facts and circumstances of each case. The person concerned need not be placed directly under

the State Government is may sometimes be that the firm is at a body corporate independent of the Government but in substance it may be just the dress up of the Government itself. The substance of the Matter was that the concept of incorporation is relevant for purposes of the subversion of the Fundamental Rights or giving effect to the Directive Principles of State Policy and for the exercise of the writ jurisdiction, but not in relation to Art. 19(1)(a) or 19(1)(b) for the reason they will be controlled by a law that that that Article 32 will refer to some national or other authority as is done in Art. 19(2) or 19(4) but, if the control of the authority is in fact, in substance and the degree primary and the actual or virtual of Government, would a proposition it would become virtually as of the State Government itself. In *Aparna Menon* (AIR 1986 SC 211) also there is recognition given to the fact that the mere office of people under the Government, need in itself in Art. 19(1)(a) as an expression of state impact that a post held under the Government which is made with a Part XVI of the Constitution.

"The measure of control by the Government over a Local Authority should be judged in order to determine the boundary line between public duty and private and a mere conduit pipe of the state's policy."

20. In *Kaare* contends that in substance though not in form the respondent holds the office under its subordination of the State Government and hence the he falls for all practical purposes as being under the State Government. It is not contended that the committee of management envisaged under the Intermediate Education Act 1935 pertaining to a private recognised and government aided educational institution does not have the status of a statutory body. Thus it is concluded by the decision of the Supreme Court in the case of *Vaidya Dharma College* (1976) 2 SCC 261 (AIR 1976 SC 1661) *Arora Vaidya Sabha*, AIR 1976 SC 1870; *Arora P. Thomas*, 1981 197 LBC 34 (1980 All LJ 2078 (SC)). A Full Bench of the Court is as of the rule in *Ally Abdul Ahad*, AIR 1977 All 529 that a recognised Intermediate College which is regulated by a Board to have a scheme of administration control by any class of management is regarded as a statutory body. The doctrine

on the subject is *Agarwal Dargah*, *Sanjay Kumar v. Balraj P. Srivastava*, 1981 1st Cases 124 (1981 Lab IC 1981) (AIR in sub-sequent). The substance of the doctrine that though not a statutory body its activities of management be controlled as subordination of the State Government is, in my view, too extensive to be accepted. No order is shown against for the argument from the pronouncement of the Supreme Court in *Rajasthan State Electricity Board*, AIR 1967 SC 1307. *Siddharth Singh*, 1979 1 SCC 421 (AIR 1979 SC 1334). *International Airport Authority* (1979) 3 SCC 489 (AIR 1979 SC 1681). *Arora, Ram*, (1980) 1 SCC 123 (AIR 1980 SC 467) which in reality do not come to the facts and circumstances, based on *International Airport Authority* addressing to the question how to determine whether a corporation is acting as an intermediary or agency of the government the Supreme Court proceeded to evaluate the different tests, apart from ownership of the assets share capital. —

"If extensive and usual financial resources is given and the purpose of the Government is giving such resources correlates with the purpose for which the corporation is expected to use the resources and such purpose is of public character it may be a relevant consideration supporting a conclusion that the corporation is an intermediary or agency of Government. It may, however, be possible to say that where the financial resources of the State is so much as to meet almost every expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. But "a finding of State financial support places unusual degree of emphasis on the management and persons might lead one to characterize an institution as State action. *Vaidya Sabha v. Dargah*. So also the maintenance of staff and persons their control may afford an indication that the corporation is a State agency or intermediary. If they also a critical factor to consider whether the corporation enjoys monopoly power which is State conferred or State preserved. There can be little doubt that State maintenance State protected monopoly power could be highly relevant in meeting the appropriate weight of the argument in law to the State.

There is also another factor which may be regarded as having a bearing on the issue and



23. The aforementioned criticism in the present is run through a conviction of management accountability society which is accepted under the *Children's Rights Act, 1985*. There is no question of leaving a state capital to Government nor does the society of the Committee have been conferred or have provided minority status. There is substance in the contention that the function performed by it is of great public importance and hence, the character of governmental function. Moreover a debatable issue is the violation of the rights set out in the *Preamble* to the Constitution. One of the elevated objects is economic well-being and the liberty of thought, expression, belief, faith and worship. Nothing prevents and constrains thought and expression as much as this education. That the welfare State is not possible that the State must try to free human beings from state or social education for its citizens depending on its capacity and the resources of development for the status of two options. Article 41 of the *Directive Principles of State Policy* envisages the speedy provision of educational and economic services of the Scheduled Caste, Scheduled Tribes and other weaker sections a special responsibility entrusted to the State (Article 41). In *Ra. Keshu Sahasran* (1961), AIR 1961 SC 1006, Article 41 imposes upon the State to endeavour to provide without discrimination for free and compulsory education for all children whichever complete the age of fourteen years. It is not imposed by the provision of the *Minors* that required in Article 41 and the impeding of *Inter-Caste* (Inter-caste) marriage (1961) against the marriage contained in Article 41 and 46. To the extent basic education is provided the government spends, but the best are immediately furnished in the presence of the country creating obligations to future generations for the State. But from that the social status jump in the conditions that the condition of management or the society is creating in its non-secondary society of the State. Improving of education may be carried out as well as a private body or an independent educational institution. In *International Support Authority* (AIR 1975 SC 1620) ordered by *Agarwal* (AIR 1984 SC 497) we have the significant nature of nature appointed in position above the range of government authority a local and central and

several factors in addition may, by such as may represent to control or to Government, it does not mean that a corporation, which is otherwise a private entity, would be immutability or agency of government by reason of carrying on of such activity. The public nature of the function assumes significance in the respect of management of governmental character or not or involved with government or limited by some other additional factor just like *Master Vaidya Kapur v. Council of India School Certificate Examination* (AIR 1981 Delhi 147-151).

24. Under the scheme of the *Inter-caste Marriage Act*, a statement upon the society running in relation to formation a scheme of Administration which must provide, more also, for the convenience of a minority of management with authority to manage and conduct the affairs of the institution (Section 14-A(1)). The statement was at of that or flexible scheme, but even in later time depending on the content it may bear the sense of conferring representation management or control (Ministry Singh v. State of U.P. (1977) 1 SCC 685 (AIR 1978 SC 1602). The Committee is composed of persons elected by the general body of the society from among its members besides the Head of the institution and representatives of members, the members of the committee is granted by the society rules and regulations it may make in the discharge of its duties of no confidence. The Scheme also deals subject to Directors approval and in the event of dispute with regard to the management, Deputy Director of Education is empowered to determine as to who is in total control of an affair (rule 14-A(14)-(15)). But does all this is with the object to provide control management of the institution by or at the hands of the management or some of the Scheme, Section 14-CC constitutionally by the U.P. Act 1 of 1984 mandating that the Scheme of Administration in relation to any educational institution proposed for the time management of the institution Act shall not be inconsistent with the provisions laid down in the Third Schedule. The Scheme requires that every scheme of Administration shall:-

"(1) provide for proper and efficient functioning of the Committee of Management

(2) provide for the procedure for continuing the Committee of Management if a member declines;

(3) provide for the qualifications and disqualifications of the members and office-bearers of the Committee of Management and the roles of these officers.

Provided that no such Scheme shall contain provisions relating to property or to loss of any particular person, cause, merit or faculty.

It provides for the procedure of calling meetings and the minutes of business at such meetings.

(5) provide that all the decisions shall be taken by the Committee of Management and powers of delegation, if any, shall be limited and clearly defined.

(6) ensure that the powers and duties of the Committee of Management and its office-bearers are clearly defined.

(7) provide for the maintenance and security of property belonging to the institution and also for the valuation of its funds and for the regular checking and recording of accounts.

25. It is rightly pointed by Sri Mathur that the State Government can under-appoint a person to the Committee of Management even when a vacancy may arise from office.

26. In view of Regulation 9 (Chapter I) under the Act, the Headmaster or the Principal shall be responsible to the Committee of Management through the Manager for the due discharge of his duties and powers in financial and other matters referred to in Regulation 10. He shall follow the directions of the management. Private duties and functions of the Committee of Management include, *inter alia*, Regulation 13 :-

"(1) appointment, confirmation, promotion, termination, re-employment, suspension and punishment (including removal and dismissal) of Headmaster, Principal, teacher, service, clerk or other staff connected with the institution under the provisions of the Act and the Rules."

(2) To decide appeals against action taken in character with all employees by the Head/Manager of the institution.

(3) part of all funds available to the employees of the institution except those held in trust by the Head/Manager or Principal.

(4) Control and management of all money, securities, property and investments of the institution, including the fees, funds and taking of necessary measures for their safe custody, investment, deposit, maintenance and legal protection.

(5) Ensuring proper utilisation of maintenance and development grants and other amounts received from Government.

(6) Ensuring all students (including students, scholarship and bursar funds) scholarships, donations, gifts, dividends, interest, grants etc. for the institution and ensuring financial discipline among one of its duties and functions."

27. The manager is required to prepare and manage the accounts. It is worthy to note the fact that while a teacher is entitled to create his property (Regulation 4, Regulation 3) (Chapter II) given the provisions according to which departmental list of teachers is to be prepared. The Regulations are used for the purposes, are made by the Board of High School and Intermediate Education, as per section 13 and with the sanction of the Government. It is by the U.P. Act No. of 1973 that the act only to with the previous sanction of the State Government. The power vested by the State Government is clearly intended to safeguard against misadministration and to promote efficiency of education which really concerns the community but the important fact is that under the overall purview of the statutory provisions, the day-to-day running of the institution vests in the committee of management. Upon irregularity in the management coming to light and if necessary, disciplinary control may also according opportunity to the Committee of Management to show cause and, for the period specified, to take over by the Assistant Controller. But thereafter the management must hand back to the Committee (Clause 13-20). The Assistant Controller is not empowered to transfer any immovable property belonging to the institution (except by way of taking from stock to stock or ordinary transfer of management) to create any charge (Section 14 (2)). The Act does not exclude therefore, does not limit the committee of management of its power to manage which of course is reasonable subject to the supervision of the State Government.

26. In *Khan* relied upon provisions relating to grant-in-aid to recognised institutions. As well appear from para 263 of the Education Code, the institution has to agree to certain conditions in order to be eligible to receive the grant. The conditions are at the prevention of false receipts, the proper utilisation of public money and the welfare including discipline, health and recreation of students. The annual grant-in-aid cannot exceed one-fifth of the whole national expenditure on the institution. Charges on account of management or of buildings and repairs, except petty repairs, cannot be included in national expenditure (para 264). In terms of para 265 grant made for the purchase of items the erection purchase, replacement, improvement or repair of schools or colleges or houses shall not exceed the total amount sanctioned for the purpose from other sources. The management has, therefore, to arrange for meeting amount on its own resources. The annual grant, moreover, shall not exceed the difference between the approved annual cost of maintenance and the approved amount of the institution from fees and private sources or half the annual cost of maintenance, whichever is less (para 266). Para 267 (b) provides that no grant-in-aid may be utilised to satisfy the income of which from all sources it suffices to maintain it, a deficiency. The management has, therefore, to arrange substantially itself to be positioned to run the institution.

27. Considerable stress was laid by the *Khan* upon the provisions of the U. P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees Act) 1971 (U. P. Act 24 of 1971) Section 4(1) it was argued, lays down that the State Government shall be liable for payment of salaries of teachers and employees of every institution due in respect to any period after March 31, 1971 in ascertaining the effect of this assumption of liability, we cannot shut our eye to what is immediately contained in section 4(1) itself and the scheme of the Act. Section 14(2)(b) provides:

"(2) The State Government may recover any amount in respect of which any liability is incurred by it under sub-section (1) by attachment of the income from the property belonging to or vested in the institution in a

that amount when an order of land recovery has been made by the Government."

(3) Nothing in this section shall be deemed to derogate from the liability of the institution for any work done by the teacher or employees."

28. The ultimate liability for the payment of salary to teachers and other employees, therefore, appears to be of the management. Not only this in the event of failure to pay as per Section 4, the manager would be criminally liable to punishment under section 14(2). For purposes of disbursement of salaries, the management is required by section 5(1) to open a stipulated bank a separate account. The account is to be operated jointly by a representative of the management and by the Inspector. The management is to deposit in the institution 10% of the amount received from the students and less the percentage may be higher if the State Government so direct. This ratio of the sum prescribed in government order under Section 7(c) of the Intermediate Education Act, Section 5 (2) states that the amount of grant-in-aid grant-in-aid is defined in section 2 (a) as meaning, with grant-in-aid at the State Government by general or special order in that behalf issued to be towards maintenance grant appropriate to the level of the institution and the amount of 10% or higher percentage of the grant for maintenance of buildings and other similar construction shall be paid by the State Government with the said income. The expenditure level of the institution came up for comparison in *State of U. P. v. Dattatraya, Varanasi* (1981) 4 P. Lab 505 (1981) (para 44). The Act said that in prompt and regular payment of the salaries due to the teachers and other employees of an institution. The facility which the State Government has taken to itself is significantly more reminiscent of that of the management not in the management escape from liability to contribute and perform its part in operating the grant account maintained in the bank. The scheme in that contemplation regulatory supervision of State Government for the social benefit of the teaching community thereby putting a curb against arbitrariness or inefficiency of the management, but without extinguishing its independent entry or pecuniary liability. It makes no difference to

ing that if the management does not deposit the requisite percentage of the fees, the Institute may receive the fees directly from the students. The collection thus made is for and on behalf of the management and it goes to the prize fund.

14. For the purposes it was also argued that a person in the position of the independent examiner is recruited from outside without the prior approval of the U.P. Secondary Education Service Commission and hence it further eroded the Commission's role as an arm of the State Government. The independent body has often under the State Government. This entails a problem under the present provision of the U.P. Secondary Education Service Commission and Selection Board Act 1962 (U.P. Act 5 of 1962) (hereinafter referred to as the Act 1962) which empowers U.P. Ordinance No. 23 of 1964 came into force with effect from July 14, 1964. The Commission which according to article 253 is a body corporate is retained under the Act 1962. The Institutes of Sports and Science appended to the Act range —

The appointment of teachers in secondary institutions recognised by the Board of High School and Intermediate Education was governed by the Intermediate Education Act, 1961 and regulations made thereunder. It was felt that selection of teachers under the provisions of the said Act and the regulations was sometimes not free and fair. Besides, the field of selection was also very much restricted. This adversely affected the availability of suitable teachers and the standard of education. It was therefore considered necessary to transfer the Secondary Education Service Commission to the State level to select principals, teachers, Headmasters and J. T. Grade Teachers and Secondary Education Selection Board to the regional level to select and make suitable possible applications for comparatively lower posts, i.e. C.T.G.T.C./P.T.C. grades for sports institutions.

15. In para 2 it is stated that the provision made under S. 60 (2) authorising the management to appoint personnel with the approval of the District Inspector of Schools is against the disciplinary nature was found inadequate and in a way a makeshift remedy. But the power to select major personnel should be retained subject to the prior approval of

the Commission which would function as independent and impartial body.

16. Under the Intermediate Education Act, 1961 an urgently enacted the power and authority vested by the State in the Commission of educational institutions was left untouched. But there was a comprehensive amendment of the Act by the U.P. Act 26 of 1968 and thereafter by the U.P. Act 26 of 1970. The purpose of selection of Principal as Headmaster of the main body Section 16 F (8) was introduced by the U.P. Act 16 of 1968 envisaged a Selection Committee of three persons including a member not belonging to the district but elected by the management. The constitution of the Selection Committee was by on the basis of the management but not an endorsement. The U.P. Act 16 of 1970 brought in changed composition of the Selection Committee rule 3. 1971 provided that in effect the final of its constitution is still composed of the President of the Council of Management and one member of the management and three experts nominated by the Deputy Director from the panel. This was an extension. More emphasis was laid on the fact that under the Selection Committee proposed by the management could have no endorsement upon the endorsement made on holding the interview that with the endorsement of 16-6 article new regulations under the 1970 Amendment Act were made in the requirement of education of quality point marks by the Inspector as all such applications and the Selection Committee mechanism was further regulated/restricted to that extent. This is shown was the coming into of law regarding the appointment by selection when the U.P. Act 5 of 1962 provided by the U.P. Ordinance 4 of 1964 came into being. The material which the legislature had in mind and brought in support to the status of selection for appointment or made upon on the Selection of Sports and Science. It was felt that the selection of teachers under the provisions of the said Act and the Regulations was sometimes not free and fair. Besides the field of selection was also very much restricted. It is well noted that it is permissible to refer to the Statute of Sports and Science accompanying the Bill for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances or related to



the water and the soil which the station sought to remedy. *Narain Khanna v. Pancham Kumar* (1985) 1 SCC 1 AIR 1985 SC 4.

34. The composition of the Commission is laid down in section 6 of the Act, 1982 and is as follows:

(1) The Commission shall consist of a Chairman and not less than six and not more than eight other members to be appointed by the State Government.

(2) Of the members

(a) one shall be a person who occupies or has occupied in the opinion of the State Government a position of eminence in Public Service

(b) two shall be persons who occupy or have occupied in the opinion of such Government a position or positions in the High Education Service; and

(c) Others shall have working experience as:-

(i) Professor of any University constituted by law in Uttar Pradesh; or

(ii) Principal of any college recognised by or affiliated to any such University for a period of not less than ten years; or

(iii) Principal of any institution recognised under the Intermediate Education Act, 1968 for a period of not less than fifteen years.

35. The tenure of the members of the Commission is as follows: (a) term of representation is the age of 62. Removal of a member of the Commission may in case of removal take effect only upon specified grounds. This includes removal on the grounds for the procedure for the management as prescribed in Rule 11 of the U. P. Secondary Education Service Commission Rules (SESC) as amended by the First Amendment Rules, 1982. And July 1, 1982. The Rule requires investigation by the Inquiry Officer who shall be a sitting or retired Judge of a High Court or a person eligible to be appointed Judge of a High Court. Among the grounds laid down in the Commission are included as appearing in section 5.

(b) to prepare guidelines on matters relating to the selection of recruitment and promotion of such category of teachers as are specified in the Schedule.

(3) to conduct examinations where considered necessary hold interviews and make selection of candidates for being appointed as such teachers.

(4) to select suitable experts and to appoint members for the purpose specified in clause (3).

(5) to make recommendations regarding the appointment of selected candidates and their promotion.

(6) to advise the management on matters relating to demand, removal or retirement in such of teachers specified in the Schedule."

36. The vacancy has to be filled by the management being which the may be done by the District Inspector of Schools. The Commission does not have, after interviewing a list consisting with or without consultation as a decision in the panel composed of candidates listed by the Commission open to consideration as far more possible for appointments. The management may appoint a candidate on or after July 31, 1982 only on the recommendation of the Commission vide section 10(1). If any vacancy is not filled by promotion, all teachers working as L. T. or C. T. Grade who possess the minimum qualification and have put in at least 3 years continuous service as teacher shall be considered by the Commission for promotion (Rule 5). The management may make all the appointments as vacant vacancies on the basis referred need not be characterised section 10.

37. Taking the overall view, consideration being had to the composition of the Commission comprising a person of eminence in public service and retired educationists, the Bench seems inclined to think, the high level inquiry envisaged for the kind of complex involved, the powers conferred and the degree of freedom enjoyed by the Commission in making the recommendations/selection on the basis of experience and the best judgment of its members, it is possible to subscribe to the suggestion for the proposition that the Commission is an instrumentality of the State Government. The nature of the functions discharged by the Commission is of public importance exclusively for a well led or mislead public government such as in the making the Commission is the product of a government department. The Commission is

disagreed) on the pattern of the Public Service Commission operating in the field of public services under the Constitution.

38. Turning back to the issue of power regarding removal related to Art. 302 provides:

—“No teacher specified in the Schedule shall be dismissed or removed from service or reduced in rank and seniority and emoluments may be re-employed for any further period of service from service by the management unless prior approval of the Commission has been obtained.”

39. The Schedule includes Trained Graduate Grade Teachers at higher Secondary School level as the respondent. Section 31A does not refer to removal/dismissal from the post but rather states that the prior approval referred to in Art. 302 is in place of that of the District Inspector of Schools. Section 31-G (2) of the Intermediate Education Act as amended by the Amendment Act 25 of 1944 made provision that the Principal, Headmaster or teacher could not be discharged or removed or dismissed from service or reduced in rank or subjected to any detriment on a recommendation or report made by or against an employee in compliance with the previous written approval of the Inspector. This is substance was retained by the subsequent Amendment Act No. 26 of 1975. Regulation 24 to 26 (Chapter III) establish the principles of natural justice pertaining to inquiry and disciplinary proceedings in the discipline. These safeguards remain in place till by virtue of section 21 of the Act, 1975 – there being nothing substantial therein provided in the new Act. The significant fact is that neither before the enforcement of the Act, 1975 nor prior to the said time between 1944 to the termination of the services of a teacher by removal etc. or otherwise except in a case as the effect by the termination of management. The Commission, in other words, depends with the removal of a teacher on its internal constitutional ability in this respect may could the Inspector do this alone. The substance is of the management and is retained, first in the text. The Commission serves as watchdog, with the object to assist administration of the management that is correct, within the purview

of the Act, acting on its own terms a teacher is being removed and is not to take over unless is within in the discipline.

40. In Khan points that in the previous ruling on the suspension of a teacher, Hyderabad (20-8-68) of section 11-G introduced by the U. P. Act 26 of 1975 covering suspension of any Head of institution or teacher by the Commission of management with the order that they should secure subsequent approval of the Inspector within the prescribed period. If not approved, the order lapses. There being nothing in the contrary contained in the Act, 1975, these provisions and covering it later. The substance in this respect also runs with the management the Inspector may not depend on his own. If the management chooses to suspend a teacher, the Inspector cannot force his will. It would not be right to maintain, therefore, that the management is devoid of its powers or reduced to a mere rubber.

41. On the date of survey the respondent was employed as a trained Graduate Grade Teacher in the private recognized and Government aided Higher Secondary School. The past history of the service of the respondent was that he was appointed by the then committee of management of the institution in July 8, 1961, in the L. T. Grade and recommended with effect from July 1, 1961. Under the Intermediate Education Act, (as amended by the U. P. Act 20 of 1958) and, thereafter, section 10-A (added) that the Scheme of Administration shall include other matters provide for the constitution of a Committee of Management vested with authority to manage and conduct the affairs of the institution. In every recognized institution, a formal resolution then had to be recommended by the management a selection committee for the purpose of selecting candidates for appointment as teacher in the institution. The head of the institution was to be an officer member of the committee, i.e., section 10-B (2). This depicts the present rule then assigned in the management under the discipline in the text. The recommended candidate had to be approved by the Inspector in order to be appointed as teacher – section 10-B (3)(a). This approval could be designed only in terms as a check against suspension and to ensure that the candidate fulfilled the qualifications prescribed

in the Regulations. It is difficult to imagine this as amounting to make the member an appointee of the State Government.

42. This gradual erosion that has been taken place in the powers of the management is apparent from the management's selection which continues to regard members of appointments (and the distinction in *Prigunath Prasad Natarajar v. Administrator, Government of Madras*, 1981 Lab IC 1048 [AIR 1978 Para 20-43] has pointed out in the Commission under the Act, 1980. This Act was in force when the election took place. For reasons discussed earlier I have found it proper that the Commission's report of report is an independent statutory duty on its part and not an endorsement of the State Government. To repeat in the words of D. K. Gajendragadkar, (AIR 1949 SC 744) mentioned here before:

"The state controlled the Government over the academy having the power to approve, disapprove or direct the working of the officers employed by such authority does not detract that officers have being a candidate for election as a member of the Legislature."

43. And a statement is made in the decision of the first test done in the *Agarwal Municipality case* (1981) 1 SCC 121 at p. 124 (AIR 1981 SC 111 at pp. 215-16):

But to judge whether employees of any authority or local institution under the control of Government become Government employees or not or holders of office of profit under the Government, the nature and nature of control exercised by the Government over the employees must be judged in the light of the local and circumstances in such case so as to avoid any possible conflict between personal interests and duties."

See also *Surya Kant Roy v. Income Tax Officer* (1971) 1 SCC 124 (AIR 1971 SC 1928) and *Madhukar G. B. Patilkar* (1977) 1 SCC 79 (AIR 1976 SC 2263).

44. In *Prigunath Prasad Natarajar* (1981) 4 LR 20 (124) (124) used for the purpose the effect of approval required to appoint was considered, but there was a different question. Section 53 of the *Andhra Municipal Act, 1953* provided that the President shall be a non-official elected by members of the Board from among themselves subject to the approval of the Government. Section 58 laid down that

a President may be removed from the office by Government on the ground of persons failing to perform his duty and as per section 60 the President was to be a public servant within section 31 *Minor Penal Code*. These were the disqualifying factors which were not the President could not be treated as independent of Government. In *Muramiah Singh Sarda v. Union Territory, Chandigarh* AIR 1981 SC 104 also relied for the purpose, there was emphasis on the fact that the school school received 70% of expenses by way of grant from the public authorities apart from the statutory provision according to the employees under the *Private Aided Schools (Governing of Services) Act, 1968* and it is on these facts that the school school was held to be amenable to the writ jurisdiction of the High Court. This was important because was of the Deputy Commissioner and Commissioner who are statutory authorities operating under the 1968 Act.

45. Learned counsel made the reference relying on the decision of the Calcutta High Court in *Gangopadhyay Basu* (1975) 25 ELR 316 also. The case as mentioned above was taken to the Supreme Court and reported in AIR 1981 SC 24. The argument is that the Supreme Court has indicated that case of the school under Life Insurance Corporation and hence the observations of the High Court is that which are relevant, and, further that the High Court considered it enough for those purposes that there is previous approval of the Central Government required in the appointment. From para 4 of the report in AIR 1981 SC 24 at p. 124 it is clear that the Supreme Court felt a necessity to consider specifically the Life Insurance Corporation case because a principle that would maintain the most focus in that of the two companies namely the *Disaster Projects Ltd.* and the *Whitman Singh Ltd.* which are 100% Government Companies. From para 15: "This principle had already the Supreme Court shown governs and I have mentioned the case already. The Calcutta High Court, however, observed that the holder of an office of profit under a local or other authority however much such authority may be subject to the control of Government would be different from the holder of an office of profit under the Government in so much that the power of appointment and dismissal as in any case



control the production, supply and distribution of food and commodities in the government-owned stores.

50. In *Kharasbaugh* also a similar suggestion for his resignation from the premises contained in section 9(1)(b) of the Government Education Act for the absorption of government employees within the State Government and services were for the purpose set on terms of conditions of the Scheduled Caste, Scheduled Tribes and provisions made in the U.P. High Schools and Intermediate Colleges (Regulation) (Food) Teachers' Colleges, 1970 and the U.P. Regulated Services Maintenance Act, 1964. Bank of India Bank with particular emphasis in the backdrop of special services. The manner contemplated in the conduct of management in not all such regulations in the general view of the powers which were vested therein and Section 10(1) were to give relief to employees mentioned within specified and not alone the orders for convenience may follow if the document contained in Article 46 of the Constitution being by way of providing compensatory treatment. (In *Chandrasekhar* 1978 case relating to private universities for regulatory enhanced was upheld in *Prabhu Kumar v. State of U.P.* (1984) 4 SCC 261. (1984 All LJ 1243)) and for service U.P. Government Services Maintenance Act, 1964 is contained a law for its rights preservation of discipline in the working of the educational institutions for which it treats any service under those conditions as "noncontinuous" and empower the State Government to prohibit strikes in the larger public interest. It can be said from these in relation rather than the autonomy of management in agency or semi-autonomy of the State Government or that the teacher holds the post under the Government.

51. Learned counsel relies heavily on the pronouncements of the Supreme Court in *Prabhu Kumar v. State of U.P.* (1984) 4 SCC 261. The respondent at that case was originally employed in an estate harbor in a Bank Branch, which was being run and managed by the State. The coming into force of the U.P. Bank Employees Act, 1970 led to become an employee of the Board of Bank Education under section 9(1) of the Act. While holding the post of an assistant teacher in public school his nomination for his election in the State Legislative Assembly. The Returning Officer

reported his nomination paper on the ground that he was holding an office of profit under the State Government and hence he was disqualified under Article 104(1) for being elected a member of the Legislative Assembly. The election petition filed by the respondent was dismissed by the Court but the appeal was allowed by the Supreme Court finding that the respondent held an office of profit under the State Government. The document presented on its election filed and the disqualifying features are clearly discernible.

52. Their Lordships took note of the Government of Orissa and Reserve granted in the Bill which later became the U. P. Bank Employees Act, 1970. The Government was taking over of the responsibility for primary education, being undertaken in the local bodies, by the State Government, (pp. 1243-44) (1984) 4 SCC 261. This was with a view to taking effective steps for securing the object of Arts 49 of the Constitution. The appointing authority in respect of government teachers, it was also stated under *Chandrasekhar* Education Officer who is an officer appointed by the State Government. The officers composing the Board are either the State Government or officers appointed by the State Government. The funds of the Board usually come from the contribution made by the State Government. The disciplinary proceedings and pensionary fund is made by the Civil Services Commission, Control and Appeal Rules as applicable to government of the State Government. In view of section 13 of Board shall vary, not such decisions as may be issued in a final form to state by the State Government. It was specifically stated in view of the provisions in the Act that —

The school is subject to not a private to sponsored persons which is recognised by the Board.

Even though the representatives of the local authorities are nominated the administration of such schools under the Act was passed, the final control of the schools is vested in the Government.

53. In giving their Lordships have gone as far as to say on the facts stated that "the Board is a practical purpose is a department of the Government" and its autonomy is negligible. The ordinary facts no analogy to the case relating to government of management in the Commission are concerned with in the

persons. The Supreme Court distinguished the case in *Agarwala Management* (AIR 1965 SC 311) observing that in *Island Cables* (1964 AIR 1232) the nature of control was such that U.P. Education Board was an authority, not only independent of the Government and every employee of the Board was in fact holding an office under the State Government. The nature and object of the U.P. Basic Education Act and sections 4 & 7 (3) and (5) all of which have been set out in extenso so that dispute arise that conclusive observation.

34. The question in *State of Gujarat v. Bhatia* (AIR 1968 (1) SC 208) 2 SCC 73 (AIR 1968 SC 14) concerned the fact whether the petitioner was actually an employee employed to the Gujarat Panchayat Service and working under the local authorities formed under the Gujarat Panchayat Act, 1961 since State Government employees. This was answered in the affirmative taking into account the features thereof including that the duties required to be performed by an employee with the effect of the State, the functions substantially of same character as laid by the State Government and the proceeds of any tax or fee — the employee received a certificate of service from the State, the officers of the State serve as to the Secretary of the Taluqa and District Panchayat. The Service Rules are particularly required to ensure a permanent standing stream of officers and in the Panchayat service is permanent in nature as in the State service and conclusively these prove a clear picture of service belonging to a controlled service under the State Government. Therefore they employ the petitioner.

35. *Basant Kishan Shrivastava* (AIR 1971 SC 357) and *State Probation Board* (1970 1 SCC 442) are important in the appointment by Government and rejection of an employee the appointment in office or making his appointment or in its discharge. As in *Chagula Karup v. Saurashtra Sahasrastra Panch.*, AIR 1961 SC 340 the apex court has pronounced of their that they are exempted in these cases, and the answer given is that in the nature of the institution. The institution such as in *Administrative Service* has a Government or institutional character.

36. In the light of the observed decision, the conclusion is that control of the State Government through exercising its control over the Commission of Management concerned under the Scheme of Administration framed in accordance with the provisions of the International Education Act in the Commission created under the U.P. Act 1 of 1962 is not such as might give rise to any conflict between the personal interest of a person placed in the position of the respondent. He is a teacher in a Higher Secondary School and the State is a member of the Legislature, and in this manner define the control object underlying the necessary deep education. The acceptance of his nomination was, therefore, not improper.

37. The matter decided accordingly (para 3 and 4).

38. There may be conversely date together.

39. The petitioner has sought to bring his case upon section 10(1)(a) of the Act submitted in accordance with the ground provided in that the result of the election is so far as it concerns the returned candidate has been adversely affected by the employee incorporated in its commission. The burden is on the respondent to show that the employee's acceptance of the nomination of the respondent has been adversely affected by the employee's incorporation upon the petitioner. It has been found above that there was no impropriety in accepting the respondent for the nomination. But assuming, in the alternative, that the respondent, the petitioner shall have well as ready that the has materially contributed to the success of the respondent No. 1. The matter fairly admitted such defect in vote of the elected list in the subject.

40. The principle applicable has been examined by the Supreme Court recently in *Chitab Kaur v. Bikaner State* (1964 3 SCC 191) (1964 AIR 1232) to which both of them referred. In para 2 thereof is a dictum that

The conclusion is, because of the possibility that a sufficient number of votes actually cast for the candidate whose nomination was improperly accepted might have been cast for the candidate who secured the highest number of votes, that to the

successful candidate, so as to upset the result of the election, but whether a sufficient number of votes would have to flow, would ultimately, remain a speculative possibility only. In the instant case, the issue is the question whether the result of the election could be said to have been materially affected (not depend on the facts, circumstances and reasonable probabilities of the case, particularly on the difference between the number of votes secured by the successful candidate and the candidate securing the next highest number of votes as compared with the number of votes secured by the candidate whose nomination was improperly accepted and the proportion which the number obtained votes (the votes secured by the candidate whose nomination was improperly accepted) bears to the number of votes secured by the successful candidate. If the number of votes secured by the candidate whose nomination was rejected was disproportionately large as compared with the difference between the number of votes secured by the successful candidate and the candidate securing the next highest number of votes, it would be next to impossible to conclude that the result of the election has been materially affected. But, on the other hand, if the number of votes secured by the candidate whose nomination was improperly accepted is disproportionately large as compared with the difference between the votes secured by the successful candidate and the candidate securing the next highest number of votes and if the votes secured by the candidate whose nomination was improperly accepted bears a fairly high proportion to the votes secured by the successful candidate, the reasonable probability is that the result of the election has been materially affected and one may venture to conclude that is proved. Under the Indian Evidence Act, a fact is said to be proved when after excluding the matters in issue, the court either believes in truth or considers its existence as probable; that is, probable may imply, under the circumstances of the particular case, as an open the supposition that it exists. If having regard to the facts and circumstances of a case, the reasonable probability is all one way, a court may not lay down an impossible standard of proof and find a fact as not proved. In the present case, the candidate whose nomination was improperly accepted had obtained 8748

votes, that is, almost 38 times the difference between the number of votes secured by the successful candidate and the candidate securing the next highest number of votes. Notwithstanding, the number of votes secured by the candidate whose nomination was improperly accepted bore a fairly high proportion to the number of votes secured by the successful candidate — it was a little more than one-third. Surely, in that situation, the result of the election may well be said to have been affected."

41. In the case before us out of the total number of valid votes 265,448 the returned candidate namely the respondent No. 1 secured 23085, the runner-up the respondent No. 2 got the next highest number being 18,755. The margin was of 1271. The valid votes secured by the respondent No. 1 were 266 only. In the light of the proposition of law set out in *Chand Ram* (1984 All LJ 1144) (SC) the vital facts in this case are —

(i) the proportion of throw-away votes cast in favour of respondent No. 2 as compared to the difference between the votes secured by the returned candidate and the number got by the next in ranking was then being 13:7 (more, only)

(ii) the proportion which the number of valid votes secured by the respondent No. 1 bears to the number of votes secured by the successful candidate is small being 1:175, only

42. In contrast to *Chandram* the valid votes obtained by Mohan were 6710 while the margin of difference between the returned candidate (19733) and the candidate next in order (13443) was 1629 only. It was observed that that the valid votes were about 16 times the difference. Further the proportion of votes secured by the candidate whose nomination was impugned to the number of votes secured by the successful candidate was fairly appreciable being over one-third or nearly 35%. The number of votes secured by the candidate whose nomination it is contended in the present case being not disproportionately large as compared with the difference between the number of votes secured by the successful candidate and the candidate securing the next highest number of votes, it would be next to impossible to

conclude on the absence of other facts and circumstances in performance of a speculative possibility than the result of the election has been materially affected upon being had also to the small proportion which the voted votes bear to the votes obtained by the successful candidate.

43. For the contrary respondent's a rightly urged submission that in *Chitab Rao* (1961 AIR L.J. 114) SC their Lordships have not departed from the rule laid in *Samant v. Subbarayan v. George Fernandes* AIR 1959 SC 1208 and *Madan Sahani* case AIR 1964 SC 1611. These were only distinguished upon facts. In *Vijaya Raje* case it was observed by Chief Justice :

"But we are not prepared to hold that the mere fact that the voted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not be merely to say that after a majority of the voted votes might have gone to the next highest candidate. The timing of votes at an election depends upon a variety of factors and it is not possible for any single petitioner to have many correct perceptions of the votes which he or she or the other is the candidate. While it may be imagined that the petitioner attacks a result in a contest with a definite margin, it is not possible to infer from the duty imposed upon him by section 10(1)(a) and held without mistake that the duty has been discharged should the petitioner fail to adduce satisfactory evidence to enable the Court to find in his favour on this point, the reasonable result would be that the Tribunal would not interfere in the matter and would allow the election to stand."

44. In *Samant Subbarayan* (AIR, 1959 SC 1208) upon there a submission upon point the court and court referred it found in very. The petitioner cannot keep the difference of the votes but that the voted votes (1286) are greater than the margin (223) of votes between the returned candidate and the candidate securing the next highest number of votes. In the instant petitioners find the poll being heavy and the margin being large in number is

in all a material consideration to justify the if the respondent No. 2 were included thereby areas otherwise the voted votes should have given the respondent No. 2 thereby making him to succeed. The members (judges) upon the petitioner remains clearly undisturbed and the operations possible does not arise the level of proof.

45. The votes are accordingly decided against the petitioner.

Issue No. 4

46. Upon the findings recorded on issue No. 3 to 5 the petitioner is not entitled to any relief.

47. The petition is accordingly dismissed. The respondent No. 1 is entitled to receive the certificate of the petitioner which is sent in Rs. 500/- only.

Petition dismissed.

1986 AIR L.J. 526

= AIR 1984 Supreme Court 706

(From Allahabad)

Civil Appeal No. 4281 of 1984 Dd 30-10-1984

Shri Ramesh Vijay Raje Gadhia and another  
Appellants v. State of Uttar Pradesh and others,  
Respondents

Constitution of India, Art 226 — When petition against executive action — Limitation — Assumption that 90 days is prescribed period of limitation is not correct — Petition should be filed within 90 days. Decision of Allahabad B.C., reversed. (Illustration Art 226(a), Para 2) (Para 2)

ORDER — Leave granted

3. It was not disputed before us that there is no limitation prescribed for the purpose of filing a writ petition against any executive action that might be suggested. Certainly the writ petitions are expected to be filed without any delay. In this case since the petition was filed more than 90 days, which was erroneously regarded as a prescribed period of limitation, the petition has been dismissed on the technical

RECEIVED BY THE COURT



granted being turned by litigation. We also observed that the petition was filed within a period of 4 months. The impugned order is therefore set aside and the First Petition No. 8077 of 1975 filed by Sanjiv Prasad Sahas and son is remanded back to the High Court for disposal in conformity with law.

3. The appeal is disposed of accordingly with no order as to costs.

Order accordingly.

1986 ALL LJ 327

H. N. SAKSENA, J.

**Panna Ram Das Agarwal and another  
Appellants v. Jagdish Pr. Sahas Respondent.**

Second Appeal No. 2032 of 1973. Df. 10/10/1985.

(A). Evidence Act (1 of 1872), ss. 49-51 — Reliability of judgments — Finding recorded by District Court is not reliable in Civil suit — Construction of amended s/s. 49B, 49C — Suit for recovery of amount — Effect of admissibility of judgment of criminal court would be only to show correctness of record s/s. 49B, 49C — Plaintiff is bound to prove facts of establishment. AIR 1986 Pat 105, 1973 All LJ 13, AIR 1973 SC 1044, *Id.* *supra*.

(Para 12)

(B). Evidence Act (1 of 1872), ss. 17, 18, 62, 63 — Admissions made by record in his previous statements in criminal proceedings — Rule not admissible in civil proceedings under ss. 17, 18 provided such admissions in clear self-incriminating and has to be taken in a whole — There is a presumption about correctness of such statement under S. 62 AIR 1941 South 129, AIR 1941 Pat 45, *Id.* *supra* (Contract P.C. (2 of 1872), s. 310).

(Para 15, 16, 21)

(C). Civil P.C. (2 of 1880), ss. 109, 101 — Second appeal — Finding of fact — Finding about endorsement of amount by defendant — It is finding of fact — Same also supportable by evidence — It cannot be disturbed merely on ground that detailed statement of evidence was not made in the judgments.

(Para 23)

Cases Referred	Chronological	Page
AIR 1975 SC 1026	1975 Cr LJ 821	9
AIR 1977 SC 873		23
1975 All LJ 11		13
AIR 1971 SC 1044	1971 Cr LJ 1072	14
AIR 1949 SC 473	1949 Cr LJ 1009	17
AIR 1958 All 285		26
AIR 1956 Pat 45		31
AIR 1953 SC 247	1953 Cr LJ 1087	35
AIR 1941 South 129		36
AIR 1940 Assam 71		36
AIR 1948 Pat 42	48 Cr LJ 585	37
AIR 1941 South 129	42 Cr LJ 746	39
AIR 1937 Guwa 234		39
AIR 1954 Pat 362	36 Ind Cr 528	40
1950 All 27	Mad 158	47

3. H. Vinay, A. Bharti and Vinita Sahas for Appellants. Jagdish Prasad and Vinod Prasad for Respondent.

**HOLDING —** This is a defendant's appeal directed against the judgment and decree in 1973 (73) of the District Judge, District Court, Jaipur. Sans who allowed Civil Appeal No. 75-8 of 1971 and decreed the suit alongwith an account of Rs. 12557/- with costs. Judgment and decree of the trial court dt. 29.10.1967 as Original Suit No. 3 of 1966 were reversed. Respondent says Prasad Sahas was Treasurer in district Treasury. Sans and minor sons were engaged on voluntary bond on 20.5.1962 by furnishing security in the form of Rs. 40,000/- so voluntarily Sans let his underestimates, etc. in the market which were to be sold by Mrs. Bhushan Lal on an off-office stamp vendor in District Treasury. Sans, Mrs. Bhushan Lal was working in the capacity even prior to the appointment of plaintiff as Treasurer. This appointment was adopted by the respondents who were by most surely Appellant was a voluntary position and service of the U.P. Government whose salary was plaintiff. The day of the declaration was to recover a particular quota of stamp from 15 Sans by the measures or has approved against so to sell them to the purchasers and to make over the sale proceeds to the plaintiff's approved agent for being deposited in the treasury in bank and to keep the money left over from sale under deposit in the single bank and to maintain an account in which all such transactions. These obligations were legally imposed on the appellant under para. 11(a), 12, 14, 45, 46, 47, 47 A, 48 of Chap. 11 of

the Stamp Manual under the Stamp Act/Act No. 11 of 1899 which need not be extracted here.

2. That in the negligence and illegal mismanagement by the Treasury Officer and lack of adequate and efficient supervision by District Magistrate, Raun, appellant used to be present at the marking of the stamps on the double lock and used to bring himself stamps from the double lock and put his signature on the register although the practice was not in consonance with the mandatory provisions of the Stamp Manual.

3. That the appellant got an opportunity to family accounts and misappropriated the stamps from time to time. It was in August, 1962 when the Treasury Officer found stamps worth Rs. 12,685/- short and for sale proceeds of the same were misappropriated by the defendant who could not account for the stamps of the sale proceeds.

4. The Collector compelled plaintiff respondent to make good the loss to the tune of Rs. 12,685/- on 24-9-1962 after the accounts were checked. Appellant tried to escape liability by spreading guilt over his person and making himself an absconder. Ultimately he jumped into a well and had to be taken out in a permanent condition. He was imprisoned in a Criminal Court under Sec. 409 IPC and was convicted. Plaintiff requested defendant-appellate to reimburse him for the amount account for no payment was there until the case was finally placed for recovery of Rs. 12,685/- from defendant. L. P. State was also made a party in the suit.

5. Definite by the appellant was a denial of the misappropriation. He further maintained that there was no privity-of-contract between the plaintiff and defendant and if the plaintiff had deposited the money under order of the Collector the defendant was not liable to reimburse him.

6. Issues framed by learned Civil Judge that defendant misappropriated stamps worth Rs. 12,685/- from Government Treasury Raun.

7. The Treasury Officer and the District Officer acted in commission of the Raun. Defendant took advantage of his negligence and mismanagement in the said circumstances. He

used to be present with the double lock although it was beyond his duties.

8. Learned Civil Judge further found that there was no privity of contract between the plaintiff and the defendant and under the circumstances defendant was not liable to reimburse plaintiff under S. 40 of the Contract Act.

9. Learned Appellate Court found that defendant reimbursed the stamps worth Rs. 12,685/-.

10. He further found that plaintiff was entitled to be reimbursed under S. 40 of the Contract Act. In the result the appeal was allowed.

11. I have heard learned counsel for the parties and perused the record.

12. The only contention pressed before me on behalf of appellant was that plaintiff failed to prove the endorsement of the required amount.

13. In S. 40, Vienna, learned counsel for the appellant took me through the findings recorded by the court below. His contention was that both the courts below were in making the account the judgment of learned Assistant Sessions Judge (S. 40 in Sessions Trial No. 374 of 1961) recording the prosecution in 14-11-62 of the respondent under S. 409 IPC and reversing his previous judgment and that high judgment of criminal court was affirmed in a civil proceeding vide *Rajda Mohan v. Bure* laid reported in 1972 AIR 12, 13 which passed —

The judgment of the criminal court is only relevant where non-conviction and acquittal. The finding recorded by the criminal court cannot be treated as a piece of evidence.

14. Reliance was further placed on M's *Rattan Chand Gupta Prasad v. Union of India* reported in AIR 1971 SC 1267 which laid down that decisions of civil courts are binding on the criminal courts for the converse was not true.

15. I have carefully gone through their findings which go on show that the finding recorded by the Criminal Court is not relevant as a conviction. In 40 to 43 of Indian Evidence Act deal with the relevancy of judgments.

Obviously the judgments (Ct. 1) of the Criminal court and (Ct. 1) of the civil proceedings to show the commission of offence under S. 405 IPC is not admissible for reversing the finding of that judgment in the judgment of a civil court was done by learned trial court. The extent of admissibility of the judgment of criminal court was to show what order was made, who the parties to the dispute were, what the nature of dispute was and who was held entitled to disputed property or was held as *Ramachari v. Janki* reported in AIR 1956 Pat 49. So in the present matter the plaintiff was bound to prove establishment of the alternative membership claim. However the learned appellate court did not make such use of the judgment of the criminal court in the manner it was done by the trial court. It has given various reasons for coming to the conclusion that the charges of the learned court were substantiated by the appellate

14. The next contention of the respondent for the appellate was about the use of Ct. 2 statement made by appellants in the trial court. The contention was that such statement under S. 342 of old Cr. P.C. (Act No. V of 1908) was totally irrelevant in these proceedings. This statement was not made in oath and was not under oath in the Criminal court in which it was recorded. It should have been ruled out. In this respondent reliance was placed upon *Vijayalingam Jagdish Prasad v. State of Bombay* reported in AIR 1961 SC 247 which observed:—

“Cancellation of the accused statement by learned merely on circumstances recorded under S. 342 which cannot be regarded as evidence. But when the prosecution evidence disclosed that the golden rule of the prosecution and charge of the accused and the accused in his statement under S. 342 admitted that he was in charge of the golden, subsequent to further evidence was led on the point the Magistrate was justified in relying on the statement of the accused under S. 342 as supporting the prosecution case concerning the possession of the golden.”

15. The next authority relied upon in the contention has been reported in *Misra Harendra Mahanta v. The State* AIR 1961 All 423 in that case prosecution failed to prove the document on which it was based and thus was being subverted by accused of execution

of document in his statement under S. 342 Cr. P.C. observed: “It was observed that such paper as the evidence of prosecution cannot be relied by any statement made by the accused in his statement under S. 342 Cr. P.C. The Court quoted with approval observations made in 1954 ILR 27 All 126.

16. The next authority relied upon by learned Advocate for the appellants has been reported in *Kishan Choud v. Delhi Administration* AIR 1958 SC 4126 in that case prosecution failed to prove that the sample contained narcotics which may be substituted and so it was held that such paper could not be relied in the trial court by the accused in his statement. All the expectations of the offence had to be established by the prosecution apart from the statement of the accused. It is correct that statement of an accused recorded in a criminal proceeding is no evidence against the making of S. 342 sub. (1) of Evidence Act which means and includes all statements made in a court by members or others in relation to matters of fact. However it does not mean that such statement must be relied on in prosecution. A court looks at the statement of the accused. Provided in S. 342 of the old Cr. P.C. shall go to show that a fact is not to be proved when after considering statement of the accused either believes it to true or considers it probable that a probable statement under the circumstances of the particular case to act upon the supposition that a crime. Thus it is obvious that the statement of the accused given in the court before the Court and is not relevant to make evidence. The statement of an accused in the proceedings of the trial court, can still be taken before the Court which that court is entitled to take into consideration in deciding a case.

17. A more look in S. 342 of the old Cr. P.C. in corresponding provision S. 342 Cr. P.C. (Act No. 2 of 1974) shall go to show that the statement given by the accused in such proceedings may be taken any consideration in such enquiry or trial and go to evidence for or against him in any other enquiry civil or criminal for any other offence which such members may and so show he has committed. It is correct that such statements may not have the same effect as evidence and cannot be treated as evidence which cannot be substituted

has the court may also take into consideration the importance of the evidence in order to determine whether the issue of the guilt is proved or not and to that extent evaluate positively on the issue relying on other evidence although not directly in evidence in the case without the finding of the evidence that is a material issue a plea of guilty is taken into consideration the court is sufficient to sustain a conviction.

18. All the authorities cited by learned Advocate for the appellant related to the use of statements of accused in criminal trial. No authority was cited to show that such statements made by the accused were not available as admissions in a civil proceedings. The standard of proof required in Civil and Criminal Proceedings is essentially different. It is not a mere preponderance of probability that requires but the burden of proof is sufficient fact of innocent and in a criminal case however a high degree of accuracy is necessary. Burden of reasonable doubt has to be satisfied in criminal cases to acquit where prosecution must prove the charge beyond reasonable doubt. In civil cases parties are not bound by their pleadings. It is not so in a criminal case. Accused after he is presumed to be innocent unless he is proved to be guilty and the trial on the prosecution never shifts. Prosecution has to prove its case affirmatively beyond a reasonable doubt.

19. Admissions made by the accused in his previous statements in criminal proceedings or statutory proceedings are relevant and admissible under Ss 17 and 18 of Evidence Act provided such admission is clear and unambiguous and has to be taken as a whole. See *Mohd. Ibrahim, Inspector* AIR (94) Guah 127 and *Kishu Sahu, Inspector* AIR 1546 Pat 42.

20. There is a presumption about guilt from all such statements under Section 106 of Indian Evidence Act.

21. The main contention put forward on behalf of appellant was that even if such statements were to be treated as an admission it could be made only if defendant could have been acquainted with it and no opportunity should have been afforded to him to explain such admission as contemplated by S. 40 of the Evidence Act. In the criminal trial no such plea was placed upon the issue *v. Ramchandra*

Page reported in AIR 1977 SC 1712 which passed.

An admission is relevant and it has to be proved before in criminal evidence. The provision in Evidence Act that 'admission is not conclusive proof' has to be considered. It is not a mere statement of evidence. First, what weight is to be attached to an admission. In order to attach weight a has to be found out whether the admission is clear, unambiguous and is a relevant piece of evidence. Second, even if the admission is proved in correct sense with the provision of the Evidence Act and if it is not clear and against the party who has made it, it is proved that if a witness in criminal cases, statements as such he should be given an opportunity of the statements are to be used against him to render his explanation and to clear up the point of ambiguity or dispute. This is a general statutory and intelligible rule. Therefore a mere proof of admission that the person whose statement it is alleged to be has contradicted his evidence, neither of its trial and cannot be taken against him.

22. In the instant case by *Muskan Lal* defendant, P.W. 1 was confronted with the statement No. 9. He admitted that it was his statement although he denied that he had misappropriated stamps worth Rs. 17955. He conceded that in the relevant period he was in office stamp vendor.

23. He further conceded that there could be some clerical mistake in the entry of the account.

24. Learned Advocate for the appellant further argued that both the courts below did not discuss the evidence on record. They merely relied on the report Ex. 3 drawn by Sd P. C. Gauran. P.W. 1 who went into the account under order of the higher authority understood that from a perusal of the entries made in the register about the stamping stamps by the defendant, he found although as stated he misappropriated Rs. 4000/- and misappropriation of Rs. 1000/- as showed by him in the report Ex. 3 and the supplementary report submitted by him on 21.9.67. It has not nothing as to how misappropriation of Rs. 1000/- as shown in the report.

25. Learned Advocate for the appellant

further argued that the plaintiff's witnesses did not specifically state where the documents were stored in defendant's and the storages and stamps. Courts below simply remanded that the witnesses had presented plaintiff's case. It could not be regarded as appearance of evidence as contemplated by O. XX B, 4 of the Civil P. C. as pointed out in *Atiyah Shah v. Mahammad Shah* reported in AIR 1951 Madh 810 and *Moti Ramji Lal Industries Ltd. v. Ch. Prasad Singh* AIR 1959 All 355. *Mohani Hussain v. Sped Shah Haroon Hussain*, 38 Ind Cas 348, 14 ALJ 1018 (Pat 1962) and *Amir Ali v. Sultan Ali*, AIR 1960 Assam 79 and *Jagan Nath v. Hareendras Prasad* reported in AIR 1957 Guja 374. So the proper view was that the case should be remanded to the courts below for giving a proper judgment.

27. All these circumstances are not singly. It was plaintiff's case that defendant also used court fee stamps worth Rs. 40/00/- and copy stamps worth Rs. 6/00/- from 17/1/1955 to 25/1/1955. He made the sale of court fee stamps worth Rs. 3000/- to defendant. Then on 22/1/1955 court fee stamps worth Rs. 25/00/- and copy stamps worth Rs. 50/00/- were with him which he could not account for at all was obligatory on him. A perusal of questions Nos. 15, 16, 17, 18, 19 and 20 will show that questions that all these details were specifically put to him. He admitted to have been the maker of all these entries and alleged that there was some clerical mistake in the said accounts. The courts below were not satisfied by the statements of the defendant in the court that the entire storage was due to clerical mistake or someone that was responsible for it. This report of Srs P. C. Gaur, Inspector of Stamps P. W. 1 who were responsible witnesses as a person skilled in the examination of documents is admissible in the ordinary evidence of the original account number 244 submitted by defendant. It was open to the court to refuse to give evidence as to the general state of examination of the documents done by him specially when his statements in this point could not be placed on account by defendant's witnesses. Similarly there is statement of Jagan Prasad Sahu, P. W. 1 who testified about the endorsement in the memorandum in which he testified about the endorsement of these stamps to defendant. These statements were believed by learned courts below. It was

found by learned appellate court that it was not a case of clerical mistake or error but there was storage and manipulations in the accounts for which defendant was accountable. He resisted up to 22/1/1955 when Treasury Officer demanded the account from him, he refused to comply. He took leave for two days and during the same night of 23rd and 24th Aug. 1955 made various attempts to conceal mistake. All these circumstances were also considered by learned appellate court. Such facts are on his person were admitted by defendant himself in his cross-examination. Defendant admitted that the stamps of the defendant value were endorsed to him which he could not account for to the extent given above. Under the circumstances it is not possible to hold that the judgment is not supportable on the evidence on record. It is partly a finding of fact and it is not for this court on second appeal to disturb the same merely on the ground that a detailed discussion of the evidence was not made by the court below in their judgment. So I find that the alleged endorsement of stamps worth Rs. 1250/- by defendant has been made out on evidence on record.

28. No argument was addressed before me by learned counsel for the appellant, on the point that plaintiff was not entitled to reimbursement. In the counterclaim started appellate court rightly found that plaintiff was bound to pay the loss to the State on account of the endorsement made by the defendant. So on the general principles of equity and plaintiff was entitled to be reimbursed by the defendant for the loss. Learned Advocate for respondents also pointed out that the position of defendant was that of agent and of plaintiff was that of Principal and as agent is liable for the loss actually sustained by principal on account of breach of duty by the agent.

29. In the counterclaim he also referred to Para 185 at page 465 Vol. I of *Halsbury's Laws of England Fourth Edition*. I need not refer on this point as the liability of defendant to plaintiff was not denied before me.

30. In the second appeal it is demanded with costs.

*Appeal dismissed*

1986 AIR L. J. 532

N. N. SARKARIA, J.

**Munesh Kumar Aggarwal and others, appellants v. Lallo Prasad Gupta and others respondents**

**Second Appeal No. 1624 of 1984 (D/ 3-17 1985)\***

**Civil P.C. (i) of 1980, (i) 5, 8, 16, (i) 22, 8, 9 — Impounding of party — Examination of process of Court under O. 1, R. 10 — Exercise of — It cannot be exercised to examine process of O. 12, R. 9 for admission of a party**

When a respondent was not alive at the time of admission of second appeal against him and his legal representative was not submitted a his place and application under O. 16, R. 2 of the High Court Rules was rejected there would be no question of impounding of LRs of deceased respondent against the previously-passed order O. 1, R. 10. Such discretionary power cannot be exercised towards a plea process u/O. 22, R. 9. Case law discussed. (Para.22)

Cases Related	Chronological	Page
1985 Luck. Civl Decree 87		65
AIR 1984 SC 128		81
AIR 1984 SC 1794		12
AIR 1983 SC 355		7
1983 AIR LJ 1385		34
1981 AIR LJ 704	AIR 1981 SC 1648	84
AIR 1978 AIR 75		12
AIR 1974 AIR 403		17
AIR 1968 SC 941		24
AIR 1964 Cal 581		19
AIR 1955 AIR 77		29
AIR 1954 AIR 35		88

**Sethabhai Prasad and C. R. Rao for Appellants**

**JUDGMENT —** The application in No. 24-04-1982 and earlier for impounding of Ameer Kumar Gupta and his son's written evidence and for etc. submitted in para No. 4 of the application in legal representatives of deceased respondent 1, Sri Lallo Prasad Gupta under

Order 1 R. 10 rule-12 of the Civil P.C.

3. It appears that the second Appeal was allowed against judgment and decree of Sri C. P. Mehta, learned JJ. Addl. District & Sessions Judge, Varanasi recorded in Civil Appeal No. 1624 of 1980. Plaintiff may be declared the business of Krishna Lene Company, Jaipur, Varanasi was joint family business of plaintiff and defendant + Prate Shastri Aggarwal and defendants 1 to 3 viz. Lallo Prasad Gupta, Ramdas Lal and Shafi Prasad had no concern with it and hence No. C 26-1983 along with its legal heir(s) in the late Ramdas Lene Company, Jaipur, Varanasi and execution of defendant 1 from the deceased father it was not concerned by both the courts below.

3. The impugned judgment was dt. 30-3-1984 Report of Stamp Register on the basis of appeal was obtained in 3-1-1984 showing limitation in filing the appeal up to 25-1-1984.

4. A caveat had been filed on behalf of respondent 1, Lallo Prasad Gupta, (Defendant 1 in the suit) by Sri Maitichar, Advocate on 26-4-1984. Delivery in court file was made good on 25-1-1984. The appeal was admitted by my learned brother Sri Umesh Chandra, J on 12-12-1984. It emerged that respondent 1, Sri Lallo Prasad Gupta had died on 8-7-1984 before the admission of the appeal. The common counsel on behalf of him of respondent No. 1 was that the appeal had been admitted against a dead person which was void.

5. It appears that an application for leave to appeal against the legal representatives had been moved by the appellants on 26-4-1984 which had not been disposed of in the time of admission of the appeal on 12-12-1984 by my learned brother Sri Umesh Chandra, J although it had to be disposed of in the time of admission of appeal vide order dt. 12-12-1984.

6. This application dt. 26-4-1984 filed under Chap. 2, R. 1 of the High Court Rules was disposed of after coming by me on 4-10-1984 and it was held that the appeal could not be said to have been validly admitted against respondent 1 a dead person and the prayer in the said application in legal heirs of respondent 1 on record was then rejected.

\*Against judgment and decree of Jd. Addl. Dist. J. Varanasi, D/ 26-3-1984.

7. The present application was filed on 19.10.1983 with the allegation that it was executed in the names of persons to replace the legal representatives of deceased respondent 1 under O. 1 & 10 rule 12 C.P.C. The relevant provisions read as follow:

12. But in case of suing plaintiff—(1) where it has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been sustained through a fraudable mistake and that it is necessary for the despatch of the real matter, as depend on to do, order any other person to be substituted as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties. The Court may at any stage of the proceedings, refuse upon to withdraw the application of either party and to avail terms as they appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit, be added.

8. The prayer was opposed on behalf of the respondents.

9. I have heard learned counsel for the parties on behalf of the applicant refuse was placed upon *Shaygan Sanyal v. Most Chaud* reported AIR 1984 SC 30. It appears that at that time a preliminary decree for partition was drawn. This decree was against respondents 1 and 2. During appeal respondents 1 filed and the legal representatives were not brought on record for more than three years. Afterwards an application was filed by applicant under O. 12 R. 4 C.P.C. and other applications were filed by legal heirs of respondent 1 under O. 1 & 10 C.P.C. These applications were rejected by High Court which held that the appeal stood true whole. It was observed by the Supreme Court that such haphazard approach which could result

in mismanagement of justice could not be encouraged. Substantial justice has to be done between the parties and technical rules of procedure should not be given precedence over doing substantial justice as Court.

10. Obviously in that case the appeal was not filed again in dead respondent and the legal representatives of respondent 1 himself prayed for addition of their names at the stage of final decree.

11. Next authority relied upon by learned counsel for the applicant has been reported in *Hayat Singh v. Raj Kishore* AIR 1981 SC 123. In this case second appeal was filed against respondents including respondent No. 3 who died pending appeal. An application for substitution of his heirs was filed on Oct. 10, 1978 although respondent 3 had died on July 16th 1975. It was held that delay in filing application after 90 days tantamount to expiry of 90 days unless whole application is in due order otherwise had to be struck out otherwise.

12. Next authority relied upon by learned Advocate for the applicant has been reported in *O.P. Kallipada v. Lakshmi Singh* AIR 1984 SC 1768. It related to an decision law under Order 12 Rule 4. An application for condonation of delay under O. 5 of Limitation Act was allowed and it was held that there was sufficient cause for condonation of delay. The statement of appeal could not be ordered and the legal representatives of deceased respondent husband could be validly substituted.

13. The next authority relied upon has been reported in *K. B. Agarwala v. Tara Chandraiah* AIR 1976 All 13. That was also a case of substitution of legal representatives on the death of a party pending proceedings against him.

14. Learned counsel for the applicants also relied upon *State Prasad v. Railway Board* reported in AIR 1984 All 13. A suit was filed against several defendants, one of whom was dead at the time of filing the suit. It was held that as the dead person was not the sole defendant, as he was the main defendant of an extraordinary person under O. 1 & 10 C.P.C. could bring on record his legal representatives.

16. Next authority has been reported in *Lakshmi Devi Deodhar v. Palla Devi Anand v. Jitendra Singh* at Page 87. In this case an application for maintenance of wife in taking steps for maintenance and getting such statement recorded was held to be legally correct.

17. The next authority relied upon by learned Advocate for appellants has been reported in *Patel v. Mansukh Lal*, AIR 1971 SC 1400. In that case the appeal had been dismissed for default of appellants counsel under O 48 R 17 C.P.C. It was held that a party should not suffer for mistake of his counsel. Obviously this ruling is not in point.

18. The next authority relied upon by learned counsel for the appellants has been reported in *Khalid Ahmed*, AIR 1974 AIR 422. It was observed in that case that O 1 R 40 sub- (3) empowers a court to appoint any person as a party where such appointment is necessary to enable the court to effectively adjudicate upon the questions involved in the suit. The nature of plaintiff's complaint or bring on record a person as defendant could not affect the court's power under this Rule.

19. It appears that the learned authority has been overruled by a Full Bench Decision reported in *Sanjiv Kumar v. Hakeem Khalid*, in 1983 AIR LJ 1035. In this case there had been an admission of suit on account of failure to bring legal representatives of deceased on record. The proceedings had started and so it was held that representatives of deceased party could not be substituted as counsel of deceased party under O 1 R 40 sub- r. (3) C.P.C. If such power was permitted to be exercised under that provision it would ultimately result in nullifying the maintenance of decedent's estate. The law is in our favour and no explanation had been offered for departing so. It was observed at p. 1035 in para 20.

From what we have said above, we feel it responsible to hold that since O 1 R 40B can be fairly equated with the provisions stated on admission of his failure to bring the legal representatives of the deceased on the record and where the application for setting aside the admission is not allowed.

I am bound by the said view.

20. In *Soni Kumar v. Mansukh Kumar*

reported in AIR 1953 Cal 665 it was held that the sub- r. (3) of O 1 R 40 C.P.C. does not constitute substitution. It is applicable for addition of a party who is not a plaintiff or defendant in the suit. The case of mere substitution was quite distinct from addition of a party.

21. In *Sanjay Kumar Lal v. Mahadevi Prasad* reported in AIR 1983 AIR 87 the appeal was filed against a party who had died prior to the filing of the appeal and it was held that in order for substitution of his legal representatives could be recorded under O 22 R 9 C.P.C.

22. On a careful consideration of the facts and authorities cited above I find that the application is liable to be rejected for the following reasons:—

1. A comparison of the prayer incorporated in the application as well application under Chap 18 R 1 of the High Court Rules disposed of by me would go to disclose that present application is simply designed to nullify the effect of my order under A/ 1918-1965 which has the effect of my orders as now passed out in *Sanjiv Kumar Anand v. Son Deodhar* (both reported in AIR 1981 SC 94). None of the authorities cited on behalf of the appellants constitutes such case in which an application under Chap X R. 2 of the High Court Rules having been rejected addition of the legal representatives could have been done by such circumstances of fact or law. The principle of res judicata is applicable even in interlocutory orders.

2. *Lata Prasad Gupta* was not alive at the time of admission of second appeal against her and her legal representatives were not maintained in his place along with application as contemplated under Chap. X, Rule 2, of the High Court Rules. It has been passed out in this earlier order that such application for leave to make such legal representatives parties to the appeal should be presented along with withdrawal of appeal. That had not been done.

3. It is not an application for setting aside statement of the appeal against respondents I under O 22 R 9 C.P.C. where there is a specific provision for substitution of a party, and that had not been avoided of and the application under Chap. X, R. 2 of High Court



(B) Rules, stands rejected: these are questions of employment of legal representatives of deceased respondent I, who was already dead at the time of statement of appellants; here it is not a case of discriminatory powers under O. 3, R. 16 C.P.C. (discriminatory powers cannot be exercised to deprive a plaintiff possession of O. 23, R. 1 C.P.C.)

22 In the view of the major the application is rejected and let the facts lie brought to the notice of the Bench having the appeal.

#### Application dismissed

1986 ALL. L. J. 581

V. R. MEHROTRA, J.

Gopal Krishna Awasthi and/or, Plaintiffs  
v. The District Judge, Allahabad and others  
re: Respondents

Civil Misc. Writ Nos. 1422 of 1984 and 754 of 1985. (S. 10-1, 1985).

(A) U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1973), Ss. 1(1) and 12 and 41 — U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules (1973), R. 8 — Needying deceased tenanty — Member of tenant's family is entitled to notice and hearing.

Rules, needing a deceased tenanty, appointing must be given to those who are likely to be adversely affected by the order. Wife of a deceased tenant is such a person who is entitled to notice. Whether she was a tenant, after the death of her husband, makes the meaning of S. 12 of 1973 Act an occasion of being at her recently residing with the tenant in the building at the time of his death could only be determined after notice to her and not otherwise. As a consequence to serve notice upon the deceased tenant's wife the court facts that she had knowledge of the proceedings or that failure to serve a notice upon her did not hurt her with any possibility would hardly matter. Giving of a notice to a tenant under state tenancy law is under order S. 12 of 1973 Act taken into consideration by the

plaintiffs. S. 10-1, 1985. A notice under that provision must be given. AIR 1976 SC 1946. AIR 1977 SC 1917 and 1984 AIR 1346 SC 1403. But see (1985) 17 ALJ 171.

(B) U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1973), S. 10 — Needying deceased tenanty of building — Declaration made without giving notice and without hearing deceased tenant's wife — Declaration is illegal — Delay in filing writs prima facie against order of an evictions order.

(Para 24)

Cases Related	Chronological Form
AIR 1976 SC 1946 (1985) 3 SCC 545	16
AIR 1977 SC 1917	17
1984 AIR 1346	18
1984 AIR 1346	19
1984 AIR 1346	20
AIR 1977 SC 1917	21
AIR 1976 SC 1946	22

J. N. Tandon, for Plaintiffs A. N. Bhargava,  
B. N. Shrivastava, for Defendants and M. P. Singh, for  
Respondents

**ORDER.** — Sri Datta Ram Awasthi was a practicing Advocate who started practice at Allahabad around the year 1933 approximately the year that he took a portion of Bangalore No. 21, Hamilton Road, George Town, Allahabad on rent as a tenant. Sri. Ram Krishna Kishore Karan is the landlady owning the house. She lives at Ujjanpur, Madhya Pradesh. Datta Ram Awasthi decided to retire from active practice on account of old age. The year under review 1972. At that time he thought of offering Allahabad Apartments in the locality about a 1/2 acre, however, that he thought he could. He decided to have illegally sub-let a portion of the accommodation in the premises to one Ganga Prasad Yadav. Advocate without obtaining any permission from the District Magistrate or the consent of the landlady.

2. On November 18, 1972, Ganga Prasad Yadav made an application for possession of that portion of the premises left in possession thereof by Datta Ram Awasthi on behalf of the landlady and was continuously living therein since 1971. When the Bench cleared and Eviction Officer issued a notice to the landlady, she filed an objection stating

that the person was added illegally by Sri Balu Ram Awasthi. The Revenue Control and Excise Officer, however, concluded that Gora Prasad Yadav was in possession of the premises since 1974 with the consent of one Mangabhai Ram, agent of the landlady. He declared the possession of Gora Prasad Yadav as not barred by law by order dated July 17, 1975. This order was made under the Court's writ No. 1074 of 1975 filed by the landlady. In this writ petition Sri Balu Ram Awasthi was impleaded as a respondent. He had filed an objection in which he said that Gora Prasad Yadav was not his subtenant but had, as a matter of fact, been permitted to live in the premises for a short period as he had been driven out of his house. The objection was struck by the learned single Judge in his judgment of July 10, 1975 reported in 1975 All IND 1275. Gora Prasad Yadav had appealed No. 2 of 1975 against the judgment which was dismissed by the Court on March 3, 1976. The judgment of the single Judge was affirmed.

5. In the year 1977 the landlady filed an application for return of the immovable property in the name of Balu Ram Awasthi under section 21 of the U. P. Act No. 111 of 1957. This was required as case No. 17 of 1977 before the Provincial Authority. Sri Balu Ram Awasthi filed an objection dated December 3, 1977 in it. He stated that he had vacated the premises so that he had possessed a manager in 1976. He also denied the bona fide need of the landlady. The further said that he was doing charitable service and the his sons and daughters continued to live and study with him. Also that he was living in that place in Bangalore as connection with his business through the same immovable material as well living in the house in Jaipur. These statements were admitted in an affidavit sworn by Balu Ram Awasthi in Bangalore on November 13, 1978.

6. Balu Ram Awasthi died on May 3, 1979. One of his sons, G. K. Awasthi was substituted as Allahabad under-sub-tenant died May 26, 1979. The landlady made an application in Case No. 17 of 1979 for withdrawing the name of Sri Balu Ram Awasthi in his place in the proceedings. Through this application Sri Mangabhai Ram stated the facts, namely that Krishna

Awasthi, Bal Krishna Awasthi, Gopal Krishna and Agar Krishna were sought to be brought on the record as legal representatives of Balu Ram Awasthi. The application was supported by an affidavit sworn by the landlady. Such is the application and the affidavit it was said that she knew that Sri Balu Ram Awasthi had died on May 3, 1979 came to the knowledge of the landlady on April 6, 1979.

7. On August 4, 1979 Dr. B. K. Awasthi one of the sons of Balu Ram remained one of the persons for the period ending July 31, 1979 through a Bank Check for Rs. 642/- to the landlady on behalf of his mother. This was acknowledged on behalf of the landlady in her letter of August 16, 1979 by Dr. B. K. Awasthi addressed to Dr. Awasthi. It was also mentioned in that letter that, before returning to India, Mangabhai Ram had made arrangements to make payable in the State Bank of India, Mathura Nagar Branch, Uttar Pradesh. One Sita Suda Kapoor wanted to purchase a piece of land which was not in the name of Balu Ram Awasthi, forming part of 21 Banarasi Road Allahabad. On being informed that the name had been vacated he made an application for allotment of the house which was in the name of Balu Ram Awasthi. This was on August 27, 1979. The application was registered in case No. 494 of 1979. On September 6, 1979 an objection was filed by G. K. Awasthi, one of the sons of Sri Balu Ram Awasthi, saying that there was no vacancy as alleged. A local inspection was made by the District Inspector of Revenue Control of the premises on October 2, 1979 under Rule 102 of the Rules framed under U. P. Act No. XXII of 1975. In G. K. Awasthi was pronounced that now. On January 2, 1980 the Revenue Control and Excise Officer, Allahabad passed a detailed order in Case No. 494 of 1979 declaring that the disputed portion of the house was vacant. On January 3, 1981 Sri Mangabhai Ram submitted a letter to Air Marshal (and) the then Chief of the Indian Air Force. In it, she mentioned that she had succeeded in an agreement for purchase of the property with the landlady who was tied up with the business of the lands of Balu Ram Awasthi to push the property and had intended to sell it. She suggested that G. K. Awasthi who was an Officer in the Indian Air Force be permitted to buy the property while his brother A. K. Awasthi another Officer in the Indian Air Force be not permitted to Allahabad. On

January 30, 1981 the landlady made an application in case No. 17 of 1977. She said that according to an order had been passed on January 1, 1981 declaring vacancy of the premises at question she did not wish to permit application No. 21 of 1977. At the same time the application No. 21 of 1977 which should be dismissed was accepted. On January 21, 1981 it was dismissed by the Rent Control and Eviction Officer in writ. The Rent Control and Eviction Officer then passed an order on March 11, 1981 refusing the premises in favour of the landlady under section 18. On March 29, 1981 the order was quashed by G. R. Awasthi in writ under section 22. It is contended by Alakshat that the learned Judge dismissed it on November 7, 1981. Cepel Kestora Awasthi then filed writ petition No. 14225 of 1981 in the Court on November 26, 1981. He challenged the order of January 2, 1981. March 14, 1981 and November 7, 1981. He also made an application for writs orders. The Court stayed his dispossession by an order of November 26, 1981 and writs were later confirmed after hearing parties on September 4, 1982.

4. Smt. Shyama Awasthi widow of Late Ram Awasthi, made an application under S. 17(b) making declaration of her order dated March 11, 1981 declaring the premises to be vacant. It was registered as case No. 186 of 1981. On July 14, 1981 the Rent Control and Eviction Officer dismissed the application. Smt. Shyama Awasthi challenged it in a revision No. 121 of 1982 which was however dismissed by the IV Additional District Judge. Alakshat on April 16, 1985. She then filed Writ Petition No. 4758 of 1985 challenging these orders. The petition was admitted and directed to be returned with the order was passed (No. 14225 of 1981) of G. R. Awasthi by an order of July 16, 1981. The same day an interim order was passed by the Court in favour of petitioner staying the effect of the premises from the premises. Smt. Kusum Kishor Bhaner and Smt. Vanda Kapoor are respondents 2 and 4 in both the writ petitions. They have filed counter affidavits in both the cases. The petitioners have replied to them through their separate affidavits some supplementary affidavits have also been exchanged between the parties.

7. Before proceeding to consider the submissions made by the counsel for the

petitioners it may be noted that And it is the

Case No. 246 of 1980 was filed by G. R. Awasthi and his mother applying for writs. Smt. Vanda Kapoor and others passing for an application requesting them to be substituted with their predecessors the trustees of the land forming part of the premises of Bangalore No. 23 Harding Road. There was that they were tenants and the defendants were wrong to forcibly evict them. The case was decided by the IV Additional District Judge Alakshat on February 24, 1981. In the course of the findings recorded were that the land with the area therein was not in the vacancy of late Sri Babu Ram Awasthi as in his possession since the status of the plaintiffs was only that of tenants; that the status Sri Babu Ram Awasthi had gone away to Bangalore in the year 1977 and permanently shifted away from Alakshat's, before going to Bangalore he had changed the name in deposit. Also that it was not established that the defendants were dispossessed or forcibly evicted from the premises. No issue of status, whether tenant or not. The case was dismissed. The judgment of the learned District Judge Alakshat on the ground that the order was challenged in Civil Appeal No. 197 of 1982 and is pending consideration by the Additional District Judge Alakshat.

8. A number of submissions were made on behalf of the petitioners by their counsel. Of these the one which was made with great emphasis, whether so deponently was given to Smt. Shyama Awasthi by the Rent Control and Eviction Officer before declaring the vacancy and making an order of refusal to issue title deed. Smt. Shyama Awasthi, according to the submission, was brought on record in one of the writs of late Sri Babu Ram Awasthi by the landlady through her representative submissions made in case No. 17 of 1977. The application is numbered CA 1 in the application of Subodh Kumar Prasad of the landlady made in reply to the supplementary written affidavits of Cepel Kestora. As late on December 2, 1982 in the writ was passed. According to CA 2 in reply to the affidavits given by the landlady in support of his application in paragraph 2 of the affidavits, the landlady says that the fact that Sri Babu Ram Awasthi had died on May 3, 1979 came to the

knowledge for the Commission July 1979 in the following paragraph, the stated that Sir Robin Rams Awartha informed that his wife's four sons and four daughters. There is paragraph 4 also said that: Mrs. Robin Rams Awartha and her 4 sons as mentioned above are the only legal and legal representatives to whom the income rights of the deceased, Robin Rams Awartha in premises No. 25 Hamilton Road, Allandale Island, Tahiti has passed in paragraph 8 of the affidavit, in which was appended Annexure CA 1 and CA 2 that the witnesses made in the affidavit that in support of the submission applications were on the ground of legal advice given to him by the landlady, a counsel. About the letter sent by the son of the landlady in August, in 1979 Annexure 1 is the first writ petition which he mentioned that the success of the writ<sup>1</sup> sent through the bank clerk, cleared the sum amount up to July 30, 1979 and that future remittances to be made payable at State Bank of India, Madhavpuri Branch, Udaipur it has been said in paragraph 14 of the counter affidavit sworn by the landlady's son on her behalf that these allegations remain untrue for the purpose of the first writ petition. In his counter affidavit, person on behalf of the landlady in the second writ petition, he was explained that later by using the paragraph 11 then when son was acknowledged by the landlady's son in the letter dated August 18, 1979 the fact that Sir Robin Rams Awartha had died on July 1, 1979 was not in the knowledge of the landlady. She came to know about the death of Sir Robin Rams Awartha much later. His advantage can be taken by the widow of Sir Robin Rams Awartha in these two letters.

9. The fact that the landlady knew about the death of Sir Robin Rams Awartha on July 1, 1979 and that she herself brought the death of Sir Robin Rams Awartha in the second affidavit case as an heir and further that her son acknowledged on her behalf receipts of rent for the premises in dispute for the period ending July 31, 1979 stand clear. The proceedings in case No. 17 of 1979 were pending till January 31, 1981 when they were got dismissed on writ petition. Case No. 491 of 1979 was initiated by Mrs. Vanda Kapoor through an application made under section 14 on August 10, 1979. Vanda Kapoor declared through the order of January 2, 1981 by the Rent Control and Eviction Officer and a copy

of that order is annexure 12 to the first writ petition. Said Bhagwan Awartha, father of the late Sir Robin Rams Awartha, was correctly entitled to receive before any order declaring vacancy was passed.

10. Counsel for the landlady, has argued that Mrs. Awartha had opportunity, before the order declaring vacancy was passed. He says that she had access through her son, Cepel Krishna Awartha who was conducting the case on behalf of all the heirs of Sir Robin Rams Awartha as stated in her affidavit filed September 21, 1979 that in case No. 17 of 1979 in reply to the submission applications made in that case. The affidavit has been brought in the record of the law in support along with the affidavit of Mohd. Yaqub Mulla on behalf of the landlady in the Court. Cepel Krishna Awartha opposed the proper for submission in paragraph 1 of the affidavit he says that he was one of the sons of Sir Robin Rams Awartha and was doing person on behalf of other proposed heirs. The counsel through the son of the son of Sir Bhagwan Awartha namely Mr. B. K. Awartha wrote a letter dated August 3, 1979 to the Rent Control and Eviction Officer, Allandale in reply to the letter No. 125 July 15, 1979 sent by the Rent Control and Eviction Officer, Allandale to him and asking for his presence at his office on August 7, 1979 in a letter Awartha mentioned the Rent Control and Eviction Officer's letter to the brother of the deceased Sir Bhagwan Awartha had been living there (21 Hamilton Road) and that he had asked him to contact the Rent Control and Eviction Officer. The letter in Annexure CA 3 in the second affidavit of Mohd. Yaqub, a copy of the order of the Rent Control and Eviction Officer of July 15, 1979 has been attached Annexure 4 to the respondent affidavit made by Cepel Krishna Awartha on May 27, 1982 in the first writ petition. This shows a communication to B. K. Awartha and from Sir Bhagwan Awartha.

11. It was urged on behalf of the landlady that in the order of the Rent Control and Eviction Officer dated July 14, 1982 on the applications of Mrs. Bhagwan Awartha dated April 22, 1981 under S. 14 (1) (b) numbered as case No. 146 of 1979 in which the Rent Control and Eviction Officer dated April 15, 1982 passed in the decision against the order of the Rent Control and Eviction Officer, it has been found that



of the proceedings on their failure to serve a notice upon her, did not deal with any prejudice, would hardly matter. Given all that and in a matter, in the case of a deemed voluntary order, S. 124(1) has been made inoperative by the amendments. It is a notice order that process must be given in relation to the Supreme Court or Yagorlka Treaty's Default notice. Goudkhar ACR 1998 SC 1149 (1998) 43, 1999.

[illegible]

154. Review of nature of complaint. Shagufta Azmatulla was also necessary because the handwriting on himself was one of the items of fact in *Shagufta Azmatulla*. August 18, 1979 that the money was by the son of Mr. Shagufta Azmatulla, on behalf of his mother through the Bank draft cleared the case completely on July 26, 1979. Why he acted by his mother's official filed on behalf of the mother the handwriting the signature was made in ignorance of the fact that Mr. Shagufta Azmatulla died, yet without anything more the members not properly stated. Since Shagufta Azmatulla is a member from the Bar Council and Executive Officer Indian-Indo-Indo society. The father was subsequently died by him. Shagufta Azmatulla in *Large* *Lawrence* No. 122 of 1945 on March 10, 1945 along with an affidavit to introduce it and was numbered as paper No. 1040. This fact is not from the supplementary affidavit of Gopal Krishna Azmatulla made on September 24, 1965 and filed in the firm was passed after disposing the file of *Shagufta* Case No. 494 of 1979 as stated by that Court. In paragraph 4 of the said supplementary affidavit, another circumstance brought to the notice of that Court was that in case No. 494 of 1979 the handwriting filed on affidavit on September 26, 1979 in which the receipt of cash through the Bank draft was acknowledged in para. 14 while stating in para. 7 that it was accepted by the said Shagufta Azmatulla of the death of Mr. Shagufta Azmatulla.

Amends. These amendments are given. How are they dated August 4, 1979 of Dr. B. R. Amends, son of Sir John R. Amends is given, in which the letter dated August 4, 1979 was sent by the son of the landholder. Though filing of the affidavit on September 26, 1979 has been disposed in the supplementary counter affidavit by Mohd. Tahir on behalf of the landholder in reply to the ground supplementary affidavit of Dr. B. R. Amends who has been used a that the extract of paragraphs 14 and 15 were in paragraph under reply were of an affidavit sworn and filed on or about December 8, 1979. It that as a matter the fact that late Shapoorji Amends claiming to be a tenant of the premises in dispute had been brought as record long before the declaration of the vacancy by an order of January 2, 1961. Whether has shown was correct or not and whether had been accepted in ignorance of the fact of death of Sir John R. Amends could only be decided in the process after notice to late Shapoorji Amends and in view the question whether the counter-affidavit could be deemed to be correct.

14. If no other ground for Chapter 440A relief would be created on the circumstances of the present case, it notes that the Race Council and Executive Officers failed to take anything a direct remedy could be passed on the ground of unfairness. She is a widow who claims that she was reminded on her behalf that the death of her husband for the period ending July 31, 1979 had been accepted on behalf of the family. On this claim she certainly deserved a more timely or more accurately stating her rights could be made. Martin because she would have no explanation other than what had been offered to her over 100 years of opportunity was afforded to her by serving a notice on that she was told to be a respondent from by a petition dated April 26, 1982 which petitioned in earlier appeal by the 12th April. Martin/Magnum. Affidavit would not fairly not insurance of access to her. This is what information from the decision of the Supreme Court in *Ulls Telle v. Board of Municipal Corporation* (1982) 120 C.J.R. 141 (A.B. 1982) 10 C.J.R. 141.

17 The failure to give notice to Soni Hargovan Kaur & Co. before summary was returned to it by certified mail is a clear violation of the

statutory requirements of R. 11 it has the result of depriving her of an opportunity of leaving without self-incrimination law. The proviso to S. 10(1) makes it clear that in the case of a declared vacancy the District Magistrate is required to give an opportunity to the landlady or tenant in the case may be of discontinuing the declaration of declared vacancy under S. 10(1) condition all be made or however in the vacancy actually declared or deemed as vacant. Ideal law for the making of an order of allotment under S. 10(1)(a) or for an order of release under 10(1)(b) should the District Magistrate must follow the procedure prescribed under the Act and the Rules framed thereunder. Even in the absence of these provisions, no proviso to section 10(1) and Rules 6(2) and 6(3) of the Rules framed under section 41 of the Act, the principle of such allotment scheme would clearly be applicable. The District Magistrate in making an order of allotment under 10(1)(a) or an order of release under 10(1)(b) of S. 10(1) clearly incurs a quasi-judicial function and therefore he has the duty to hear. There must be an impartial objective assessment of all the pros and cons of the case after due hearing of its parties concerned. See *Yogendra Tripathi v. District Judge Gorakhpur* AIR 1984 SC 1449 (1984) 43 LJ 989.

16. The order of the Rent Control and Eviction Officer of January 3, 1981 is untenable not only on the ground that the procedure followed by the Rent Control and Eviction Officer was violative of the provisions of the Act and the Rules but also on the ground that it was violative of the principles of natural justice. It cannot be sustained nor can the order passed by him on March 11, 1981 in issuing the permits on basis of the landlady under section 18 following the declaration of vacancy. The procedural bar of hearing having been determined, nothing exists in *Smt. Bhagwati Aramshi*, the fact of its affidavit for the District Judge in Revision by the order of November 7, 1981 will not vitiate it. The order of the District Judge will also fall with it.

17. The two notices which have been issued in the revised writ petition filed by *Smt. Bhagwati Aramshi* namely the one dated July 14, 1982 (1982) reporting for application for

review made under section 10(1)(a) and the second passed by the Addl. District Judge on April 16, 1985 in the Revision against it, can also not be sustained. The first of these orders is not only improper but also grossly improper inasmuch as facts which were found without notice to *Smt. Bhagwati Aramshi*. For example the fact that *Smt. Aramshi* was not residing with her Son Babu Ram Aramshi at the time of her death has been assumed without disclosure of the basis for such assumption. The judgment of the District Judge dated November 7, 1981 dismissing the Revision filed by *S. K. Aramshi* against the order of the Rent Control and Eviction Officer of March 11, 1981 relying the process as breach of the landlady has been relied upon. That order, which affirmed the order of release consequent upon declaration of vacancy without notice to *Smt. Bhagwati Aramshi*, itself being untenable in law cannot partly be reliance based upon it. The revisional order of the Addl. District Judge dated April 16, 1985 which upholds the order of the Rent Control and Eviction Officer relating to remove the existing order of the eviction of *Smt. Bhagwati Aramshi*, suffers from the same error in finding that the order of the District Judge was rightly relied upon by the Rent Control and Eviction Officer. The revisional order also says that no error of procedure had been committed by the Rent Control and Eviction Officer. It further says that the sons of *Smt. Bhagwati Aramshi* had full knowledge of the proceedings from the very beginning and one of them, namely *S. K. Aramshi* was concerned the proceedings. The application according to the revisional order was to be allowed having been moved after her husband had the litigation before the Rent Control and Eviction Officer and the revision filed by her before the District Judge was pending. This was also a reason for refusing relief. It is held by no order it was erroneous that a notice be given to *Smt. Bhagwati Aramshi* before declaring the person of vacancy, the so-called delay by her in making the review application would be of no consequence particularly when there is no dispute that no notice was issued to her by the Rent Control and Eviction Officer before declaring the person to be vacant. The revisional order must also therefore fall.





— Court could not find sufficient grounds for finding whether subjective satisfaction was acquired on rational or reasonable ground.

(Para 10)

#### Cases Relieved Characterized Para

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Vinod Kumar P. K. Parvati Ashok Kumar A. K. Varna for Petitioner, Chief Advocate for Respondents

**S. C. MATHUR, J. —** Gur Bas Singh Partha Kishore Sahasra directed that was passed against the order of preventive detention passed against him by the District Magistrate Lucknow under the provisions of the National Security Act 1950 (Act No. 16 of 1950) for three A.D. The State regularly for the disposal of his petition filed within a month, complaint (complaint) and may be immediately, 1980.

3. The order of detention was passed on 25.1.1981 a copy of the order is annexed 1. The petitioner was released on 26-4-1981 and the grounds of detention were served upon him on 27-4-1981 a copy of the grounds of detention is annexed 2. Only two grounds have been mentioned on the basis of which for District Magistrate claims to have acquired by subjective satisfaction in the effect that the detention of the petitioner was necessary to maintain law and order in the State and to prevent the petitioner from acting in a manner prejudicial to the maintenance of public order.

3. In the first ground it is mentioned that an altercation took place on 17.11.1981 in 12 noon in which one Sander lost his life. It is stated that first information report with regard to the occurrence was lodged at police station

Kyath Nagar Lucknow under S. 302 Penal Code on the basis of which on 19.11.81 was registered. It is further stated in the very ground that in respect of the occurrence after investigation, charge sheet was submitted to Court where the case was pending trial. The petitioner is mentioned in the report.

4. In the second ground it is alleged that the best available made a report which was received in the general diary dated 29-11-1981 in No. 42 in which it was stated that on that day the petitioner and his brother Gura Sahra Singh alias Shan deceased for Sanyal who was a woman in the occurrence referred to in ground No. 1 against giving evidence in the last case. The general diary entry is alleged, which was made on 11.12.1981. It is further stated in the ground that investigation of the matter was done by the Sub-Inspector of Police for Ashra Singh and the allegation was found to be correct.

5. The petitioner has stated that the second ground of detention is not related to maintenance of public order and therefore, an order of detention could not be passed under S. 3(2) of the Act. In respect of the first ground he has alleged that no case had been filed in Court and it has been wrongly stated in the grounds of detention that charge sheet had been submitted and case was pending in Court. According to the petitioner the detention order in far as first ground is concerned is based on non-existent fact. We shall first take up the challenge relating to the second ground.

4. In the second ground there is no reference regarding the effect of the Court upon the witness Sanyal. It is also not stated that on account of the death allegedly committed by the petitioner and his brother for Sanyal or other witnesses had been or have been arrested that they were unwilling to give evidence in the case referred to in the first ground. On such facts it has been held in two Full Bench decisions of this Court that the three cannot be said to be sufficient maintenance of public order and such a threat cannot form the basis of an order of preventive detention under S. 3(2) of the Act. In *Habib Cooper Wya Para No. 11451 of 1984* AIR 1985 Del. 177 observed that —

It would be unreasonable to hold merely

arrests or persecutions or simple threat to women with government would attract public protest or tranquillity. Only that kind of threat to witnesses, which is likely to create panic or terror in the minds of the court members, that if they give evidence against the accused there would be reprisal. A simple threat cannot reasonably have any such effect to disturb quiet, peace of the life of community. But, if the threat is accompanied by show of force or by any overt act of force publicly, it may create terror in the witness and the witnesses may feel anxious on account of possible reprisal. Such threatened have power to public order.

In *Habibul Karim Khan Pann*, 12 AIR 1958 of 1954 (Allahabad), State of U. P. decided on 11-11-1953. (reported in 1954 AIR 1200 at P 1200) for majority judgment stated that —

The giving of threat to individual witnesses accompanied by any overt act would not have such an impact as to disturb the quiet peace of the life of the community.

In the present case also the alleged threat is not accompanied by any overt act. In view of the law laid down by the Full Bench the threat-related upon in the present case cannot constitute basis for an order of permanent detention under S. 303 of the Act. Accordingly the detention order cannot be sustained on the basis of the second ground.

7. The learned counsel for the State relied upon *Mohammad Salim v. Amirul Haq, Inayat Kargar Pann*, 1983 CrLJ 548. The judgment notwithstanding, has been expressly overruled by the Full Bench in *Amirul Haq v. State of Punjab*.

8. Regarding the first ground there is no dispute between the parties that no charge-sheet had been filed in Court in respect of the witnesses referred to in the said ground and that no such report of the said occurrence had become pending in a Court of law. However, the learned Magistrate has tried to explain the circumstances in which the filing of charge-sheet and production of case in Court were to be considered in the first ground. In his supplementary written affidavit dated 8-8-1984 he has stated that the occurrence referred to in ground No. 1 had taken place on 17-11-1982 and that information report in respect of the occurrence was lodged in the same day at police station at Kiratpur Nagar. It is thus stated that enquiry was was conducted by

the local police from 17-11-1982 to 1-12-1982 and from 2-12-1982 to 4-1-1983 and that on 4-1-1983 the police of Police Station Kiratpur Nagar submitted charge-sheet. In para 4 it is stated that during the investigation of the case by the local police the Inspector General of Police directed the Crime Branch to make a check on the investigation done by the local police. On the basis of the direction of the Inspector General of Police, the Crime Branch obtained from the local police the case diary on 29-11-1982. It is further stated that despite the fact that the case diary and copies of the investigation done at that time had been taken away by the Crime Branch, the local police continued with the investigation and completed the same on 4-1-1983 and in the very same day they submitted charge-sheet. As a proposition of law it has been stated in para 7 that the investigation by local police does not go against the account of the charge-sheet submitted by the Crime Branch. In para 8 it is stated that although the local police submitted charge-sheet on 4-1-1983 it could not be sent to Court because of the absence of the papers of the investigation which had been taken in Court custody by the Crime Branch on 29-11-1982. In the charge-sheet, which is alleged to have been submitted by the local police on 4-1-1983, the prosecution has been shown as an abettor. In the language of the affidavit in para 11 it has been stated that the Criminal Investigation Department has not yet completed the investigation which is still pending.

9. In para 1 of his first written affidavit on the affidavit dated 8-7-1983, the learned Magistrate has stated that the local police had, in a report given to him stated that charge-sheet had been submitted and from that it has been inferred that charge-sheet had gone to Court and, therefore, in the order of detention it has been mentioned that charge-sheet had been submitted and notice was pending in Court. Thereafter he has stated that normally while passing order of detention under the Act he takes upon himself of the investigation and submission of charge-sheet before he passes an order of detention. Since the present case he would have passed the order of detention even though the charge-sheet had not been submitted to Court. It would be worthy while to reproduce his delivery in his own language. It reads thus: —

"Normally I signed while passing M. D. A. orders when the investigation is completed

and charges that submitted before the existence of a particular crime are used against any proposed defense although it is not necessary. That is only for defendant's own subjective satisfaction regarding sufficiency of grounds against proposed defense. In this case also the same procedure was followed and after police investigations were over the defendant was satisfied about detaining the petitioner on the basis of the ground and another ground. Defendant was not aware of any guarantee by C.I.D. in the investigation and defendant after being satisfied with the material placed before him passed the order. Once the charge sheet could not reach the Court due to short necessary requisites then conclusion have been any difference to the satisfaction of the defendant as on the basis of completed investigations of the local police defendant was satisfied that the petitioner be detained. The substance of charge-sheet in the Court was only a fact perceived by the defendant on the basis of written report before him but as not reaching the Court would not have altered defendant's satisfaction regarding the detainer.

Now let us continue the explanation of the District Magistrate. He himself admits that normally the power in order of preventive detention only after investigation has been completed and charge-sheet has been reported to Court. After making the statement he does not indicate any reason for departure from his normal procedure. After stating his normal practice, he makes a bold statement that he would have passed the same order even if the charge-sheet had not reached the Court. In the absence of any explanation regarding departure from normal practice we are unable to accept the District Magistrate's assertion that he would have passed the same order even with the knowledge that charge-sheet had not been submitted to the Court. From the admission made by the District Magistrate it is apparent that a fact existed that was taken into consideration while passing the order of detainer on the first ground the real one existed fact being the submission of the charge-sheet to Court and pendency of case in Court. On similar facts a Division Bench of this Court on 19th Feb. No. 101 of 1982, *Subhash Mehta v. State of U.P.*<sup>1</sup> decided on 25-3-1982, quashed the order of preventive detention. In this case it was stated in one of the grounds that the

detainee was involved in a crime said to have been committed on 11-12-1980 and the charge-sheet was sent in Court with respect to this date either it was pending consideration. The Bench mentioned the receipt of that date and concluded the charge-sheet had been submitted on 23-3-1981 while the order of preventive detention had been passed on much earlier on 3-3-1981. The Bench accordingly came to the conclusion that the detainer order was based on non-existent ground and could not therefore be sustained. The judgment has full application to the facts of the present case. It is respectfully submitted to the very learned Judge that

■ In *Barth v. State of U.P.*<sup>2</sup> 1984 Lucknow L.J.B. the detainer order had been passed with the allegation that a case under S. 201 Penal Code was pending and charge-sheet was filed in Court against the petitioner and the real case was pending. The fact, as subsequently revealed, was that prior to the date on which the detainer order was passed, the case had concluded and the detainer had been reported as the charge. A Division Bench of this Court quashed the detainer order on the ground that the same was based on non-existent fact. While quashing the order the Division Bench observed:—

"The fact of acquittal of this petitioner was a material fact which was not taken into consideration by the detaining authority who was under the wrong impression that the case against the petitioner was still pending. The order of detainer being based on subjective satisfaction of the District Magistrate, he is not, as a prudent magistrate is to inquire he would have passed the detainer order or not if the accused person had been fully acquitted by him. As such, the detainer order cannot be sustained."

The same effect are the decisions of the Court as in

1. *Ajay v. State of U.P.* 1984 Cr. L.J. 999 and 2. *McConnell Jacob v. State of U.P.* 1983 Cr. L.J. 200.

■ The learned counsel for the State tried to distinguish the above decision by submitting that in the present case the District Magistrate had taken insufficient warning before that, he would have passed the order of detainer even if a fact were brought to his notice that



The authority relied by the learned court is *Isard v. District Magistrate, West Deshpur* AIR 1975 SC 389.

35. And *Day v. State of West Bengal*, AIR 1974 SC 403 was relied upon for pointing that a lot of subjective satisfaction of the issuing authority cannot be asked by the Courts with a view to appreciate its objective sufficiency. In the present case we are taking the aid of subjective satisfaction for the purpose of eliciting an objective satisfaction of the authority. We are taking the aid for the limited purpose of testing whether the subjective satisfaction was based on correct ground or not correct ground. We are not at all entering into the question of sufficiency of the grounds of detention. The authority therefore is of no assistance to the learned court.

36. The learned court for the prisoner further submitted that the detention is ground No. 1 could not be relied in public order and therefore also the fact proved could not be relied upon for passing the impugned order. In view of the fact that we are of the opinion that the impugned order of detention cannot be sustained on the grounds already discussed, it is not necessary to consider the submission of the learned court.

37. In view of the above, the prisoner is allowed and the order of prisoner dismissed dated 25-1-1985 is set aside & wholly quashed. The prisoner shall be released forthwith unless required in connection with any other case. The cost of the prisoner shall be only

(Prisoner allowed)

INM ALL L.J 347

3 D AIR 1975 389

Amara Nath Prasad v. IV Additional District and Sessions Judge, Sahasrampal and others, Respondents

Civil Misc. Writ No. 1227 of 1985 D/ T-9-1985

U.P. Regulations of Money Lending Act (28 of 1976), S. 28(1), Enacted (as added by U.P. Act 34 of 1976, S. 4) with S. 28 - U.P. Regulation

(RECEIVED 14/01/86) SMC/377

of Money Lending Rules (1976), S. 15 - Compliance of delay in filing Form 10 - Registrar issuing office not recommending acceptance of Form 10 filed with some delay for registration and registering date is not correct - There is compliance of Form 10 S. 28(1) - Registrar not giving any explanation for delaying delay in filing filing without application for compliance of delay - Incomplete - Registration is valid

In the instant case, money lender detainee had submitted form 10 on certain date before coming into force of Act 1 of 1976. In this form, the name of debtor alone had been disclosed, the particulars of debt had not been given. In view of S. 26 read with S. 19, the form was incomplete. Thereafter the petitioner submitted another form 10 and sent it to the Registrar. But since Registrar had no power to extend period of limitation within which registration had to be made, the application by the debtor (Regulator) from that money lender, was filed at subsequent Act 1 of 1976, the date mentioned in the office of the Registrar recorded a note in the office that form 10 submitted by petitioner earlier, he accepted and subjected to the provisions of Act. This note was signed by Registrar.

Here, the fact that some checks stated the reasons for the delay having been signed by Registrar implicitly showed that the Registrar had condoned delay in filing form 10. By mere fact that specific reasons had not been given in the order it could not be said that the Registrar had not applied his mind. The signing by Registrar of form of office where reason for delay was there and intimate registering of said form 10 completed with provision contained in Form 10 is further. The Act did not make any mistake of its irregularity in process of compliance once the registration had been accepted as valid.

(Para 17-18)

Rule 15 only provides for the Registrar issuing form 10 and to keep the said record in his custody. The regulations were intended to do only this, that a loan file should be recorded and registered with the Registrar and nothing more. Once the Registrar had accepted form 10 and registered the debt, it is not argued the mere fact that, incidentally, certain amounts having not been given or a written application having not been made does

not take away the effect of the registration made under the provisions of the Act and the Rules framed thereunder. (Para 10)

**RE S Hagan the Prisoner: Bail/Remission in Bangladesh**

**CITATION** – This is a petition under Art 226 of the Constitution

**3.** The first heading is the present petition set in motion –

First respondent No 3 borrowed a sum of Rs. 5,000/- from the petitioner Anwar Haidar on 1st July 1974 at an interest at the rate of 20 per month. On that very day, he executed a promissory note and a receipt in favour of the plaintiff petitioner. Since the amount was not paid by Haidar, the petitioner filed a suit No. 34 of 1974 for recovery of Rs. 12,400/- in the court of the Civil Judge, Sahasraper. At the time of the promissory note and the receipt dated 1st July 1974, in the suit, only two persons were present, namely, as to whether Haidar borrowed Rs. 5,000/- and the interest at the rate of 20 per month and executed the disputed promissory note and the receipt, is alleged, and, secondly, to what relief a civil plaintiff is entitled.

**3.** The trial court, after examining the evidence on record, came to the conclusion that the promissory note and the receipt were executed by Haidar for the sum of Rs. 5,000/- had been obtained by the petitioner in the District Nazim's list July 1974. In view of that finding, the suit was decreed by judgment dated 27th July 1977. That judgment has become final, no appeal has been filed against the said judgment.

**4.** Thereafter, the plaintiff petitioner filed an application for execution of the said decree. In the execution proceedings, the judgment debtor filed objections under S 47 C.P.C. The magistrate on the objection set on foot against the judgment debtor as the executor of the registration as money lender. It was further pointed out that the loan in question had not been shown in Form 19 which was filed before the Registrar of Money Lending at Sahasraper, and, as such, the decree passed under the suit was without jurisdiction and a nullity. Those objections were considered by the Civil Judge Sahasraper. By an order dated 4th January 1979, the objections were

allowed, the execution was dismissed and it was directed the decree holder was not entitled to recover the amount through execution and the property attached was consequently released. Aggrieved by the decree dated 4th January, 1979 a revision was filed before the District Judge Sahasraper. The revision came up for hearing before the 1st Additional District Judge Sahasraper. By an order dated 14th January 1980, the revision was also dismissed. The petitioner has now challenged the order dated 4th January 1979 and 14th January 1980 by means of the present petition in the Court.

**5.** I have heard the learned counsel for the parties at length, who have very ably argued the points.

**6.** Learned counsel for the petitioner has urged that once Form 19 prescribed under the U.P. Regulation of Money Lending Rules 1974 thereunder referred to under Rule 1 had been accepted by the Registrar in which the advance given to Haidar had been recorded, the court below acted without jurisdiction in holding that the decree was a nullity and that it could not be executed.

**7.** The second contention of the learned counsel is that in view of the amendment made in S 36 of U.P. Act No 1 of 1979, the accompanying the Registrar of the application for registration was valid and the mere fact that no reasons have been given by the Registrar for condonation of delay in filing the application for registration with something could not be sufficient to hold the registration to be invalid.

**8.** The third contention raised by the learned counsel further is that, in any case, even if the order regarding the application made by the petitioner money lender was voided for any reason, the same having not been challenged, because final and the decree which had been passed in his favour could not be disturbed a nullity which the respondents had been too much by a complete view of law.

**9.** Learned counsel for the respondent on the other hand, has very eloquently contended that the process, which has been initiated U.P. Act No. 1 of 1979 in S 36 of the Act consequently had done, was there has to

be an application by the money lender for condonation of delay, the Registrar has to consider the circumstances for condonation of delay whether he has specifically stated a falling short sufficient cause has been made out for condonation of delay and as the statement of an application and the reasoning of the satisfaction by the Registrar, the Registrar cannot be treated to be a valid application in the eye of law pending the decree holder to present the decree which otherwise would be a nullity in the eye of law.

14. It is necessary to state the rule-applications which are relevant for considering the condonation made by the learned registrar for the parties.

15. The U.P. Money Lending Act, 1976 commenced to operate in the Act came into force on 1st September, 1976 by virtue of a notification issued by the State Government in exercise of its powers under S. 1(3) of the Act. Section 26 of the Act provides that every money lender carrying on the business of money lending from before the commencement of the Act shall submit to the Registrar a statement in the prescribed form within a period of three months from the date of such commencement. Sub-section (2) of S. 26 of the Act further provides that the statements referred to in sub-section (1) shall contain the particulars of debts due to each money lender and of deposits made with him and such other particulars as may be prescribed. Sub-section (4) of S. 26 provides that failure of one complying with the provisions of sub-section (1) of S. 26 if a money lender has money lender shall be treated to claim any amount from a debtor in respect of any loan advanced before the commencement of the Act, under the name of such debtor and the amount due from him has been specified in the statement referred to in sub-section (1).

16. From a reading of S. 26 of the Act, it is clear therefore, that the debt has to be registered with the Registrar. If it is not so registered then the creditor cannot claim the amount from the debtor even though there may be a decree against the debtor.

17. In exercise of the powers under S. 23 of the Act, the Governor has framed Rule 19 lays down the manner in which the statement referred to in S. 26(1) of the Act has

to be submitted. Form 10 has been prescribed for this said purpose. Sub-clause (2) and (3) of R. 19 provide that the statement shall be submitted in duplicate and shall contain the particulars of all the debts and deposits of a money lender. The said statements shall then be immediately forwarded to the office of the Registrar. Sub-clause (5) provides on which responses the Registrar to put his dated signature on every page of the statement and shall also put his official seal thereon. The other sub-clauses relate to keeping the said register in custody of the Registrar so as to avoid differences in any subsequent stage. Rule 19 therefore clearly provides that a statement having a valid signature, Form 10 submitted by the creditor has only to be signed by the Registrar and then kept in the custody.

18. It appears that after the promulgation of the Act, certain creditors could not register their claims within the period stipulated, as provided by S. 26 of the Act. The Legislature consequently added a proviso to S. 26(1) of the Act by U.P. Act No. 1 of 1977 which reads as under:

Provided that the Registrar may on an application by such money lender for different cause condone the delay and accept the statement submitted within three months from the date of the commencement of the Uttar Pradesh Regulation of Money Lending (Amendment) Act, 1977."

19. In the instant case the petitioner-debtor holder had submitted Form 10 on 30th November, 1976 to the Registrar and stated the debts that were due to him. The particulars of the debt had not been given in view of S. 26 read with R. 19, the form was consequently incomplete. Thereafter on 10th December 1976, another Form 10 was submitted by the petitioner and sent to the Registrar. But when the Registrar had no power to accept the period of limitation as to which the registration had to be made, the application lay in the office of the Registrar.

20. After the coming into force of U.P. Act No. 1 of 1977 on 15th March, 1977 the debt presented in the office of the Registrar regarded a suit in the effect that in view of U.P. Act No. 1 of 1977 the statement in Form 10 submitted by the petitioner earlier be

accepted and referred to form part of the record. This was envisaged by the Registrar on 21st March 1975. It is not disputed that there was no separate application for consideration of delay in filing the accepted form 10. It is also not disputed that there was no speaking order passed by the Registrar concerning the delay in filing Form 10 which was filed with a delayed 15 days. The question, therefore, arises whether such a requirement shall be treated as valid or not in the eye of law.

19. The provision of S 30 of the Act, which I have already quoted above, only lays down that the Registrar may, on an application made by the moving trader, for sufficient explanation for the delay and accept the form. It is not provided that the application should be a written application. An oral application can be held to be a sufficient compliance of the proviso. The fact that the oral order which stated the reasons for the delay, having been signed by the Registrar explicitly, shows that the Registrar had considered the delay in filing Form 10. By the same order the specific reasons have not been given in the order a reason for oral, that the Registrar has not applied his mind to the question of consideration of delay in accepting Form 10. The agency by the Registrar of a case of the nature where the reason for the delay was from within the state requiring while not Form 10 in my opinion, complied with the provisions mentioned in the proviso to S 30 of the Act.

20. As I have already indicated in detail above Rule 19 only provides for the Registrar signing Form 10 and not the need record in his custody. The Legislature cannot intend that it only this that a bona fide debt should be recorded and signed not with the Registrar and nothing more. Given that Registrar had accepted Form 10 and considered the delay in his record, the courts has that, ultimately, express reasons being not forthcoming in a written application having not been made does not take away the effect of the requirement made under the provisions of the Act and the Rules framed thereunder in any manner. Consequently, the first two submissions made for the learned counsel for the petitioner are well founded.

21. So far as the third requirement of the proviso for the procedure is concerned, that too in my opinion, has substance. It is

not disputed that the issue or question had been mentioned in Form 10 and the same had been accepted and signed by the Registrar. There is no challenge to the fact that the Registrar is a trustee between the creditor and the Registrar. The debtor cannot take the benefit of any irregular or defective process of requirement once the requirement has been accepted or valid.

22. In the result, the petition is allowed. The orders dated 4th January 1975 and 14th January 1980 are hereby quashed. The provision of S 30 of the Act is declared to be inoperative. The petition is directed to bear their own costs.

Petition allowed

1980 ALL L J 160

S L YADAV J

Ahmed Fala and Another - Applicants v.  
State of U.P. - Opposed Party

Criminal Misc. Pet./Bail Appn. No. 14768  
of 1975 (27-10-75) 1980

(14) Criminal P.C. 12 of 1976, S 428 -  
Cognate of bail - Demand application on grounds  
which were not acceptable - Such grounds  
are said to be new grounds - Bail should be  
granted on new grounds

Even where the first application of bail has  
been rejected by the High Court on an earlier  
occasion, a new grant of bail on fresh application  
cannot be granted which were not argued before  
(Para 10)

In second application for the bail grounds  
of denial of discrepancy, a wrong given  
number of copies in the case of preparing  
questionnaire and those actually found by  
court and regarding the discrepancy in  
writing of the report by Station Officer without  
following the procedure mentioned in Ss 137  
and 158 of Criminal P.C. were the grounds  
which were not argued before when first  
application was decided, these grounds are  
said to be the new grounds and bail could be  
granted on these grounds. Case law discussed  
(Para 15-16)

REVENUE/AGRICULTURE/ANNUAL



(b) Criminal P.C. (2nd 1974), ss. 405, 407 and 408 — Grant of bail — Provisions of ss. 407 and 408 are mandatory — Court issued warrant for arrest and/or report under provision — Names of all arrested and prosecution witnesses not mentioned report — Deputy Magistrate's report not available — Accused are entitled to bail (Para 15)

Cases Reported	Chronological	Page
1983 All Cr. Judgments 1		2-10
1983 All Cr. C 64	1983 All Cr. C 1	2-17
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All 1976 SC 1044	1976 Cr. C 1037	7-16
All 1976 SC 2433	1976 Cr. C 862	3
All 1973 SC 2476	1973 Cr. C 135	7-14
All 1973 SC 1231	1973 Cr. C 1261	9-13

Vijaya Mann for Applicants A & B, for Respondent.

**ORDER.** — This is a second bail application filed on behalf of Akmal Nade and Asif under section 408 of the Code of Criminal Procedure. The first bail application was rejected by the Court on 1.10.1985.

1. The prosecution says as stated in the order of 1985 in short, A & B, Akmal Nade and Asif, the informant was coming to his house and when he reached the entrance gate way near Hakim Mohdullah the applicant called such leaves and some other accused entered with later started entering again on the deceased's car a result thereof died. The accused is was released by Magistrate after the failure of the deceased and other witnesses, namely, Shari Akmal etc. The first information report is Annexure 1 and the post mortem examination report is Annexure 2 is the affidavit accompanying the second bail application. On behalf of the complainant and the State witness-officers have also been filed.

2. Sri Vijaya Mann, appearing for the applicant, urged that under 3 (1) Cr. P.C. the procedure for investigation has been provided. The necessary provisions of 5 (1) Cr. P.C. are lawfully removed before in order to apprehend the arguments advanced by the learned counsel —

1 (1) Procedure for investigation — (a) If from information received or otherwise an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under 5 (1) to investigate he shall forthwith send a report of the case to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person or shall deposit one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe as that officer is to proceed, to the spot, to investigate the facts and circumstances of the case, and if necessary to take measures for the discovery and arrest of the offender.

Provided that —

(a) When investigation is in the commission of any offence in gross against any person in name and the case is one of internal nature the officer in charge of a police station, need not proceed in person or deposit a subordinate officer to make an investigation on the spot.

(b) If it appears to the officer in charge of the police station that there is no sufficient ground for suspecting or an investigation, he shall not investigate the case.

(c) If satisfied the commission of an offence and (a) of the person or sub-section (2) the officer in charge of the police station shall state in his report the reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall, also forthwith state in his, information, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cases as to be investigated."

3. It was further urged that it was clear from the first information report (Annexure 1) that the fatal occurrence took place between 9.30 A.M. whereas in para 1 (1) Cr. P.C. the Officer in charge of the police station is to proceed in person or shall deposit one of his subordinate officers to investigate the facts and circumstances of the case to the Magistrate empowered to take cognizance of such offence. Further in para (1) 1 (4) Cr. P.C. the officer under 5 (1) Cr. P.C. is to be submitted through such superior officers of police to the State Government, by general or special order, may appoint as the

trial). In compliance with these requirements the Senior Officer sent a radiogram (Agreement 5A) which shows the affidavit is about 9-10 A.M. (Ghous Ahmed) was mentioned. The rest of the document was accordingly changed from 9-30 A.M. to 9-10 A.M. and the names of other accused persons were not mentioned nor the names of the witnesses were mentioned. The learned counsel submitted that as the time itself was changed in entirety of the case can be had and further appears that the first information report was sent off at 9 A.M. and the deposition from the police station was also taken at 9 A.M. and the preparation of the post-mortem was done since 10-30 A.M. to 12 P.M. These details were given in paragraph No. 7 of the affidavit corroborating the second first application and also were on the basis of the entry in the general diary dated 9-7-1995. In this way it was urged that the statutory provision of S. 157 Cr. P.C. was not complied with. Paragraph Nos. 7 and 8 of the affidavits have been relied on in the counter affidavits filed by Bhagwant Singh Chohan, Sub-Inspector police station, Nabha, District Report. In paragraph No. 4 thereof it has been stated that after the first information report was lodged the deponent came to the place of incident and recorded statements of the eyewitnesses and he stated that he noted four or five injuries. He further says the statements contained in paragraph Nos. 5 and 6 of the affidavit. Similarly, Ghous Ahmed, the complainant, although filed his counter affidavit that he stated in paragraph No. 7 of the counter affidavit only that much that paragraph Nos. 7 and 8 would be repeated by the Investigating Officer and he did not comment the allegations about the radiogram and the defects pointed out in the prosecution as required by S. 157 Cr. P.C.

5. The learned counsel further submitted by taking reference to paragraph No. 8 of the affidavits that in the post-mortem only fractures against were noticed whereas in the post-mortem examination report twenty four injuries were found on the portion of the deceased. About this reply was given in the counter affidavits filed by Bhagwant Singh Chohan, Sub-Inspector and he stated that according to the deponent only fractures against were found and a large number of injuries were caused by the doctor when he

examined externally. In paragraph No. 8 of the counter affidavits filed by the complainant it has been stated that all the injuries on the person of the deceased could not be correctly found while preparing the post-mortem on account of the blood. It was urged that there were disfigurements in the number of injuries noted in the post-mortem and those found by the doctor. It was further urged that there could be one or two mistakes in ascertaining the number of injuries but ten injuries might not be noticed to be noted while preparing the post-mortem. This was found to be inconsistent with the post-mortem and was not correctly prepared as provided by law. Reference was placed to *Kali Chandra v. State of U.P.* 1961 All Cr. Judgments 101, *Surya Pal v. State of U.P.* 1961 All Cr. Judgments 279, *State of Punjab v. Tarlok Singh*, 1971 Cr. L.J. 280 at P. 864, 142B 1971 SC 222, 223, 224, *Mansoor v. State*, 1965 All Cr. C 44, *Mansoor Ali Khan v. State of Kerala*, 1966 SC 100, 101, 102, 142B 1966 SC 226, *Shivji Singh v. State of U.P.* 42B 1970 SC 242, and *Alpana Chandra v. State*, 1981 All Cr. Judgments.

6. In S.A. Ghous appearing for the complainant and Sri B.K. Jaiswal appearing for the State urged that even discrepancy in finding the information as required by S. 157 Cr. P.C. was not fatal and would not vitiate the trial. On account of certain mistake in the number of injuries detailed by the doctor and those mentioned in the first information report of the post-mortem would not lead to any adverse inference against the prosecution and the applicant would maintain his trial. The second first application cannot be considered as a matter of right nor is it a first appellate court and while new points have been advanced the second first application could not be considered.

7. The learned counsel for the complainant placed reliance on *Bhagwant Singh v. State of Punjab*, 1975 Cr. L.J. 157 para 5 & 7, para 157, 142B, 1976 SC 224 at Pp. 226 to 228 and *Kali Singh v. State of Punjab*, 42B 1970 SC 229 para 7 page 262.

8. I have found the learned counsel for the parties. It is a fact that this is a second first application. It cannot be allowed unless some new points have been made yet, that in this application some new points have been made.

out materials in the double-blind discrepancy in the re-examination were not given in the last trial application. The contents of paragraph no. 7 of the affidavit accompanying the second trial application are entirely irrelevant. In considering the second trial application on new points are argued or others when the first trial application was being decided, leave on new grounds for revised trial application can be considered.

8. One of the issues that the constitution of the Legislature is mandatory: 157 Cr P C was to make the provision authority of S. 158 Cr P C mandatory. It is mandatory that the Session Officer shall send a report of the first information report to the Magistrate supported in take cognizance of such an offence. Under S. 157 Cr P C the words the court qualify the words information which substantially reveal the same contents of the information, for being sent to the Magistrate and also to the superior officers of the police as required under S. 158 Cr P C. But in the present case the correct rate was not used in the subsequent turn to series of all the accused in the prosecution was not were mentioned, hence I am of the opinion that the report sent by the Session Officer was not in compliance with the provisions of Sec. 157 and 158 Cr P C.

10. Further even the discrepancy pointed out by the learned counsel for the applicants regarding the number of separate nodes down in the photographs and the actually found by the donor was not usefully mentioned as only 14 separate were mentioned in the photographs from whereas twenty four separate were found by the donor as a clear from Annexure 2. There may be a fortuitous error difference but not so much.

11. As stated earlier even the statements contained in paragraph Nos. 7 and 8 of the affidavit were not denied and paragraph 9 of the affidavit was relied on as the material affidavit of the complainant in paragraph No. 99 that it appears to be that the body was found as a spot of blood, hence separate could not have been returned while preparing the postmortem, but it was the explanation.

12. *Rak Charan v. State of U.P.* (1991 All Cr Judgments 185) (supra) was a case where

the Court held that when there appears to be some discrepancy in the time of the first information report, the applicant must be entitled to lead. *State of U.P. v. State of U.P.* (1991 All Cr Judgments 179) (supra) was a case where some discrepancy was held as to be material and entitled the applicants for lead even though it may require further probe at the time of trial. In *Mushtaq v. State of U.P.* All Cr C 447 (supra) it was held that the time of occurrence mentioned as to be 7.30 P.M. whereas in the first information report the time of occurrence was mentioned as 6 P.M. This indicated that the report report and the details of the dead body were prepared but some part mentioned later on and on that case the trial was held to be required. In the present case also difference is there given in the information sent and discussed in the first information report was entered.

13. In the *State of U.P. v. Tarika Singh* (1971 Cr L 1463) on page 1014. (AIR 1971 SC 1211, 1212) para (supra) the Supreme Court came to the conclusion that from the documents of the evidence is a clear that the report was not lodged at 1.45 P.M. but at a much later hour and when the police arrived at the scene of occurrence there were considerations to decide what version should be put forward and such delay was held to be material as to the prosecution version. In *Wardulal Agarwal v. State of Kerala* (AIR 1980 SC 436) (supra) the Supreme Court held that once the first information report is held to be not genuine the prosecution would be doomed. In *Chander Charan v. State of U.P.* All Cr Judgments 16 (supra) it was held after discussing the materiality due by the time the report report was prepared the first information report had not mentioned material and in the report report, again for the credit and the separate were both were filed for it and not actually filed later on.

14. *Sanjay Singh v. State of Punjab* (AIR 1976 SC 1394) (supra) noted report by the learned counsel for the complainant, was a case where the delay was caused in sending the first information report to the Magistrate and the Supreme Court held that in such case alone the trial cannot be said to be required. The case would not help the complainant.

*Secretary Price Singh v. State of Punjab* L.R. 1971 S.C. 2679) argued relied upon by the learned counsel for the respondent, was a case where paragraph 6(5) and (6) P.C. Order was discussed and the facts were that there was some delay, as a result of the respondent's report to the Magistrate and it was held that that by itself it does not make the investigation report, but here the facts are entirely different. There was question of delay although after coverage report, within the instance after coverage report and information are respectively the main cause of its existence in the respondent in the facts of this case were entirely different.

15. In the instant case although what has been argued by the learned counsel for the applicant pursuant to the evidence brought in the state of material facts and regarding any legal question regarding the same. But prima facie it does appear that the procedure provided under G. O. and 1942 P.C. which was mandatory, has not been complied with. Further there was discrepancy in noting down the number of charges in the charges of preparing the proceedings and those actually filed in the docket. It appears that the provisions of S. 174 Cr. P.C. were not complied with.

16. Before going with the case it is pertinent to mention that the observations made by me above would not affect the trial of the case in any manner whatsoever. However, it does appear that the applicants are entitled to bail.

17. Let the applicants, Ghansai Sahi and Anil, be released on Grant Bail and And, be released on Grant No. 10/85 under Section 40(1) of 1942 P.C. Police Station Nalanda, District Bijnor, be released on bail on their existing personal bonds and furnishing two persons making three affidavits of the Chief Judicial Magistrate Bijnor. A copy of the order should be issued within days (10) on payment of usual charges.

Order accordingly.

1986 ALL. L.J. 609

S. D. AGARWAL, J.

*Rob Den v. Argentina Den* (Indication: Argentina v. Argentina Den) (Indication: Argentina v. Argentina Den)

*Chief Justice* No. 100 of 1983, G. O. 10-11/1983.

(1) *Provisional Small Cause Courts Act of 1973, S. 15(1), Sub. 2, Art. 1 and Explanation* (as amended) (by U.P. Act 37 of 1972) — *Building* — *Definition of* — *Includes any residential or commercial structure* — *Not for erection of house from a part of such structure* — *Coverable by a bridge, Small Cause Court (Provisional) — Building*

The word "building" mentioned in the Explanation to Art. 1 means a residential or a non-residential structure and includes other things mentioned in the Explanation. Where there is a case by a person for the erection of a house from a part of such structure, such case will not be cognizable by a Judge, Small Cause Court.

(Para 14)

It is not necessary now that a big area of land is covered by a residential structure and the building will be on the basis of the area of the land in order that portions may be able to carry another house on the same land. That is very common in the case of vegetable markets or other such types of markets. That where only a small area has been or has been carrying an structure from out of a larger area with a residential structure the same would be a building within the meaning of the Explanation to Art. 1(4). It is not that a non-residential building structure.

(Para 11, 14)

(2) *Provisional Small Cause Courts Act of 1973, S. 15(1), Sub. 2, Art. 1(4) (as amended) by U.P. Act 37 of 1972* — *Not for erection of house* — *Transfer from regular Civil Court to Small Cause Court* — *allowing objection to jurisdiction existing house* — *Not stopped from suing the suit is not within the Small Cause Court* (U.P. Act 37 of 1972, S. 15 — *Evidence Act of 1973, S. 114*).

It is well settled that a jurisdiction exists.

\*Agreeing the petition of R. V. Sahni, J. J. Add. Dist. Judge Bijnor, D. 25-11-1983.

REVENUE/AG/10/10/11



written statement, it was specifically pleaded that the suit was not an all encompassing one but was the regular Court of the Civil Judge. Item

9. On 16th August, 1980 the respondents moved an application to state that the suit is the respondent's and for recovery of interest and had money paid and that the suit is only cognizable by the Judge, Small Cause Court. On 16th August, 1980 in view of this application it appears that in view of this facts on the record, that the property in dispute would be confined to be a building, the learned counsel, for the plaintiff/proprietor parties accepted the contention made by the respondent's counsel that the suit may be transferred to the Judge, Small Cause Court as decreed by the respondents. The District Judge consequently on 12th September 1980 transferred the suit to the court of the Judge, Small Cause Court. By the court of the Judge, Small Cause Court, there was interest and fees. No 5 was in order —

4. Whether the suit is not cognizable in the Court?

10. On 16th January 1981 the Court took up Item No. 4 as a preliminary issue and held that the suit was cognizable by the Judge, Small Cause Court, as urged by the learned counsel for the respondents. After this issue was decided, the Court took up the hearing of the suit and, ultimately, by judgment dated 21st October 1981 the suit was decreed.

11. In the evidence of the respondents who was examined as D No. 4 it was comprehensively stated in their statement that the land in dispute was covered by a house. D No. 4 had also stated that the land in dispute was in a gallery. From the evidence on the record, it is clear that the property in respect of which the suit had been filed was an area of land covered by a roofed structure. It is one of those cases where a larger area of land was covered by a roofed structure. It is not uncommon now that a big area of land is covered by a roofed structure and the litigation is on the basis of the area of the land in order that possession be given or kept on the basis of the title of the land. That is very common in the case of vegetable markets or other such types of markets. In the instant case also from the facts I have already stated above, it is clear that only a small area of 14' X 4' was given to

the respondents for carrying on business (being an off-shoot area with a localised structure) in it, in fact, a non residential roofed structure.

12. Section 103) of the Act which is relevant in the instant case is quoted below:

103) A. Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as now accepted from the cognizance of a Court of Small Causes by which the suit is triable.

13. By virtue of the subsection (3) of Section 103 of the Act the suits specified under Second Schedule are excluded from the jurisdiction of the Court of Small Causes in the Second Schedule. Article 4 is in the following words: —

4. A suit for the possession of immovable property or for the recovery of an amount in such property but not including a suit by a lessor for the recovery of amount from a tenant after the determination of his lease and for the recovery from him of compensation for the use and occupation of that building after such determination of lease. Explanation — For the purposes of this Article the expression building means a residential or non residential roofed structure and includes any land (including any garden, garage and out house, appurtenant to such building) and also includes any fringe and garden attached to the building for the more beneficial enjoyment of the said.

14. This Article 4 was substituted by the C. P. Civil Laws Amendment Act, 1970 (2 P. Act No. 30 of 1970) for the purposes of the Court of Law Practice.

15. On a reading of Article 4 it is clear that a suit for possession of an immovable property or for the recovery of an amount in such property has been excluded from the jurisdiction of the Judge, Small Cause Court, but a suit by a tenant for the recovery of amount from a building after the determination of his lease and for the recovery from him of compensation for the use and occupation of that building after such determination of lease is cognizable by the Court of Small Causes.

16. The Explanation further defines as to what is a building. Building means a residential or a non residential roofed structure and includes other things annexed to the

**Explanation.** The question, therefore, is *how* where title is lost by a lease for the creation of a lease from a non-modestly modified structure that such a case would be cognizable by a Judge Small Cases Court. In the instant case, as I have already held above, the suit is for the creation of a lease by the lease from a building which is a non-modestly modified structure. In the circumstances, the suit is clearly cognizable by the Court of Judge Small Cases.

19. Learned counsel for the opposite party has vehemently urged that the respondent had himself owned an application to the effect that the suit is cognizable by a Court of Judge Small Cases and he cannot now be permitted to urge the question in the reverse. The argument of the respondent, however, in the other hand, is that respondent cannot predicate jurisdiction on a Court and if the Judge Small Cases Court had no jurisdiction to try the suit, the decree would be a nullity as it is a case of inherent lack of jurisdiction.

20. It is well settled that a jurisdiction cannot be conferred on a Court by consent, acquiescence or waiver when there is issue not yet exhausted when it is. Acquiescence waives the remedy of the parties in the relevant situations relating to jurisdiction or territorial jurisdiction of the Court, but these factors have no relevance where the Court lacks its basic jurisdiction, which arises in the very root or authority of the Court to pass any decree and renders the decree if passed a nullity. (*See Chandra Nathwan Khosla v. Brij Mandan Singh*, AIR 1970 All OR and *Kamal Singh v. Chandra Prasad*, AIR 1954 SC 340).

21. The above mentioned principle being applied, would not be applicable to a case where the jurisdiction of the Court depends upon the determination of certain facts. In the instant case, in view of Article 4 of the Second Schedule of the Act, it is clear that the suit, which would be cognizable by the Judge Small Cases Court, would be only that suit, which is a suit by the lease for the creation of a lease from the building. The two necessary ingredients required say firstly that the suit should be by a lease for the creation of a lease and secondly that consent be a suit relating to a building. In a case where a dispute has been raised whether the property is respect of which

the suit has been filed by the lease for creation of a lease is an reference to a building or not the jurisdiction of the Court would be dependent upon the determination of the question whether the property in dispute is a building. If the parties agree into a certain stage of the proceedings that the suit relates to a building then, in that event, they cannot be prevented to show but not void as the same results and later urge that the suit does not relate to a building. In the instant case, initially the respondent urged that the suit was in reference to a building. The evidence was brought under record with the same effect. The learned counsel for the plaintiff opposite party finding that he cannot predicate to a building, ultimately agreed with the respondent and proceeded the case to be considered in the court of the Judge Small Cases. The respondent are now engaged, in law, in any manner from urging that the suit does not relate to a building and, in such, it is not cognizable by the Court of Judge Small Cases.

22. It is a well settled principle that relates to a property which is a building, there would be inherent lack of jurisdiction in the court of the Judge Small Cases. I consequently accept the contention raised by the learned counsel for the opposite party that the respondent is estopped from challenging that the suit does not relate to a building and, as such, the decree passed by the Court is without jurisdiction. The contention consequently raised by the learned counsel for the respondent is, in my opinion, without substance, firstly for the reason that the respondent is estopped from raising the plea that the suit does not relate to a building and, secondly from the fact, it is clear that the suit relates to a building.

23. In so far as the second contention of the learned counsel is concerned, the court below assumed the evidence on the record and thereafter came to the conclusion that the property had been taken in *Arbitration Proceed*. That clearly is a finding of fact and I do not find any legal infirmity in the same. It is also clear that in the instant case, it is a well settled case in record and also by the parties that the possession of the property has already been delivered to the plaintiff opposite party for dispute was only remains regarding payment of rent and damages for suit and

consequence. The respondent did not insist upon execution of the promise to deposit to the landlord. Till the promise was handed over back to the landlord, the respondent himself was liable to pay rent. Consequently, the decree for return of rent and damages for use and occupation prejudicially affected the respondent's interest in the property.

It is the result, the respondent said and is accordingly dismissed. In the circumstances of the case, the parties are directed to bear their own costs.

**Revenue demand**

1986 ALL L.F. 358

V. K. MEREDITH, J.

**Sriani Nagar Nagar Panchaj Agri and others, Petitioners v. State of U.P. and others, Respondents**

**Creditor: Writ Pet. No. 1843 of 1985 (Dr. 11-9-1985)**

(A) Constitution of India, Art. 226 — Procedure — Plaintiff's petition was pending challenging matters in favour of a society under U.P. (Regulation of Building Operations) Act 1960 stating that permission was granted under S. 7(2) of the Act on application of society — There is subsequent public hearing notice that permission was denied various under S. 7(4) of the Act and not open to society — Earlier finding in favour of society. (U.P.) Regulation of Building Operations Act (34 of 1960), S. 7(2), (4). (Para. 6)

(B) U.P. (Regulation of Building Operations) Act 1960, S. 16(2) — Appeal against permission to state intervention — Competent to increase of rate reasonably suggested by permission under law more fully body.

As the Act itself enables a person aggrieved by the grant of permission to contest on file an appeal which would pre-empt that in case permission is accorded by the prescribed authority — In spite of the permission of the grounds upon which a modification permission under S. 7(1A) or the permission enables the recipient thereof to act in contravention of

the Regulations issued under the Act a provision can be made above it in an appeal by one who can reasonably be said to be aggrieved by the action of the prescribed authority and it may be more fully body or modification suggested — In the circumstances, it cannot be said that the rule laid down in AIR 1983 SC 499 that apart from a person who complains of a specific legal injury suffered by him or a person or class or group of persons a member of public having sufficient interest can maintain an Article 32 petition is valid for public duty arising from breach of public duty or from violation of some provision of the Constitution or the law and such enforcement of such public duty and enforcement of such constitutional or legal provision does not amount to necessary appeal, nor can a provision be made that such one may lead to unnecessary appeals and may really affect the rights of those who have obtained the permission from the prescribed authority by prolonging the period during which they may be looked upon as aggrieved and give grounds to anyone on the street to hamper the continuance or progress of the work permitted to the permission granted. The court also said that the ground permission may be issued in various appeals may unduly cause some harassment to the respondent of the permission in a number of appeals, yet the consideration of issuing notice for public duty arising from breach of public duty and necessary decision affecting the rights of public generally by a statutory authority for strengthening the enforcement of harassment to the respondent of the permission. (Para. 15)

(C) U.P. (Regulation of Building Operations) Act 1960, S. 16(2) — Appeal under — Society — Constitution — Provision of Limitation Act do not apply to proceeding under the Act — Absence of provision for excluding time taken for obtaining copy of order if furnished voluntarily — Constitution of delay by resort to S. 5 or 12 of Limitation Act not permissible (Limitation Act (34 of 1963), Sec.). (Para. 24)

(D) U.P. (Regulation of Building Operations) Act (34 of 1960), S. 16-A (2) — Breach — Delegation of power — Special Government with power of dealing with violations on alteration of functions under Act, 1960(2) — Order passed by him is not affected in ground of delegation of power in





arbitrary, arbitrary, contrary to the order passed by the Prescribed Authority on Aug. 9, 1985. The order of the Controlling Authority was not such work for result that the order passed by the Prescribed Authority reversed. The President, in view of President and Secretary, their cases in the Court, for relief through the present was passed under Art. 22 of the Constitution. The State Government, Art. 1 of the petition, it appeared when the petition was presented through its counsel and later that same officers, the petitioner filed their rejoinder affidavits and so partly prayed by the counsel for both the parties the matter reached through at the Minister's stage and a final judgment of liberty.

4. The order of the State Government in June 25, 1985, in paragraph 7, in the present petition. Prior to it, on Aug. 17, 1985, the State Government passed an order disposing of a preliminary objection raised on behalf of the petitioner in the maintainability of the petition. This order is paragraph 4, in the petition. The State Government has taken in the view that the order of Aug. 9, 1985 could be challenged in an appeal filed within thirty days thereof, and inasmuch as the appeal was subsequently filed on Oct. 28, 1985 before the Controlling Authority, it was barred by limitation. The State Government held that the Controlling Authority was at error in allowing the delay in the presentation of the appeal under S. 5 of the Limitation Act, because it was not necessary to Controlling Authority, and that there was no prior made on behalf of the applicant for condonation of delay. The Controlling Authority reserves right in not more condoning the delay. As this was the Controlling Authority had no power of condoning the delay in the presentation of the appeal, which was held under S. 19(1)(c) of the Act, which was a special Act under the Act itself.

5. At the outset an objection of Mr. G. V. Verma, appearing for the State Government, states: The objection is that the grant of adjournment to the applicant by the Prescribed Authority was in the nature of a stayed permission under S. 74 of the Act against which no appeal is provided under S. 13(2). Further, when has been filed on substance, (b) and (c) of S. 13 which read thus:

"(2) Orders granting or refusing permission to the applicant, any order made under sub-sec.

(2) of S. 7 refusing to grant any permission shall, subject to the provisions of sub-sec. (2) be final and shall not be questioned in any court.

(3) Any person aggrieved by an order under S. 7 refusing to grant any permission or by an order under S. 7 A, granting a permission, may, as an order under S. 13, file an application for any condonation or by the station of permission for any officer possible under the Act may within thirty days from the date of such order prefer an appeal to the Controlling Authority and the order of the Controlling Authority shall be final and shall not be called in question in any court.

6. The objection was open to the State Government in the present. In the earlier case, *State of Madras v. P. V. Narayana Murthy*, 1984-4 All. J. 1251 (Madras), the State Government, in the Controlling Authority, agreed the decision of the Court dated August 23, 1984 under parties in that the prescribed Authority had approved the appeal filed submitted by the State by order of Aug. 9, 1985 against which no appeal, when to the Controlling Authority by the President and Secretary of the Parishad was allowed by an order of the Controlling Authority. The State was directed to challenge the applicant order of the Controlling Authority in a revision before the State Government. The petitioner of the Court, which has already been filed, presents the following observation:—

In the instant case from the facts on record, it is clear that the petitioner himself applied to the Prescribed Authority for sanction of the plan which implied that he wanted permission for development of the site in the regulated area. It is the permission which was granted to the petitioner by an order of the Aug. 1985 and the impugned order as appeal under S. 13 of the Act. It seems, therefore, he said that the appeal against the order of 28th Aug. 1985 was not maintainable before the Controlling Authority, as the order mentioning plan and granting permission to the petitioner was nothing new but an order passed under S. 74 of the Act."

The finding showed at looking between the petitioner for the appeal filed on substance, it will have to be accepted that there was an

order proceedings under S. 70, Aug. 3, 1953) against which an appeal was filed under S. 19(2) by the President and Secretary of the Parishad.

7. The objection that the President and Secretary of the Parishad were not approved persons within the meaning of the Act and had no locus standi in the appeal before the Controlling Authority, is negated by the same complaint by Sd/- H. P. Ramiah before us. This objection was raised in the earlier Writ Petn. No. 7033 of 1984 reported in 1984 All LJ 1249) also but the Court did not grant the objection as it felt that the questions could clearly be posed and by the State Government while dealing with the objection. The objection can be appreciated better [See first para] here.

8. The U.P. (Regulation of Building Operations) Act 1958 is an Act to provide for the regulation of building operations in Uttar Pradesh and to provide therein.

Whereas it is expedient to provide for the regulation of building operations with a view to prevent, regulate development of urban and rural areas.

It is hereby enacted in the Ninth Year of his Majesty of India as follows:—

1. (a) The State Government is authorised to declare or cause to be regulated area, if in the opinion of the State Government any area within U.P. requires to be regulated, with a view to the prevention of land being used for land, regulated manner of building or growth of sub standard colonies or with a view to the development and expansion of the area according to proper planning.

Development has been defined in S. 3(a) to mean, the carrying out of building engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land. It is enacted by the State Government, by notification in the Gazette to enter such Regulated area into accordance with the Act or with the Rules as it may consider necessary regarding the matters mentioned in the section in relation to the regulated area. Under S. 3-A, the State Government can enter a Master Plan or be prepared at least it is of opinion that any regulated area requires to be developed according to the Master Plan. Section 5 then

says that "no person shall undertake or carry out the development of any part or regulated area or street, prevent or make any material change in any building, except in accordance with the regulations, if any, issued under the Act and with previous permission of the prescribed authority in writing. Prescribed Authority has been defined in S. 2(g) to mean a person or body of persons appointed as such by the State Government in respect of a regulated area. Section 7 is so far as it is material, reads thus:—

7. Applications for permission.—(1) Every person desiring to obtain the permission referred to in S. 7 shall make an application in writing to the prescribed authority in such form and containing such information as may be prescribed in respect of the development, building, extension or nature of work to which the application relates.

(2) On receipt of such application, the Prescribed Authority, after making such enquiry as it considers necessary, shall by order in writing either grant the permission subject to such conditions, if any, as may be specified in the order or refuse to grant such permission.

(3A) The only grounds on which permission may be refused are the following, namely:—

(a) That the work or the use of the site for the work or any of the particulars comprised in the site plan, ground plan, elevations, sections or specifications would contravene the provisions of any law or any other rule or regulation made under the Act or any other law.

(b) That the application for such permission does not contain the prescribed particulars or is not made or signed in the prescribed manner.

(c) That any information or documents required by the prescribed authority under the rules or regulations has not been duly furnished.

(d) That the proposed building would be an encroachment upon any public premises as defined in the Uttar Pradesh Public Premises (Extension of Classification Component) Act, 1972.

(e) That the use of such buildings does not stand on a street, and there is no room for such building from any such street by a passage or

performing not less than twelve foot wide approaching to each side.

(b) that the site for the work forms part of the area, the layout plan of which has not been sanctioned.

(c) that the use of the proposed building or the plan is not in conformity with the Master Plan.

(2) Where permission is refused, the grounds of such refusal shall be communicated to the applicant within fourteen days of the receipt of such application.

(3) Where an order is communicated within the period mentioned in rules (2) granting or refusing the permission, the applicant may by a written communication call the attention of the prescribed authority to the omission or neglect, and through omission or neglect sustained for a further period of thirty days the prescribed authority shall be deemed to have permitted the proposed work.

Provided that nothing in the sub-section shall be construed to entitle any person to act in contravention of the Regulations made under this Act.

Section 7-A, thus provides that —

"7-A. Communication of permission refused order final. — If in any case after a permission has been granted under sub-rule (2) of 5.7 the prescribed authority is satisfied that such permission was granted in consequence of any fraudulent misrepresentation made or any fraudulent statement or information furnished, the prescribed authority may cancel such permission for reasons to be recorded in writing and any work done thereunder shall be deemed to have been done without such permission.

Section 8 provides for penalties for breach of the provisions of this Act and 5.7. It enables the prescribed authority to direct demolition of a building or remove same. Section 15 which has been added to the original part of the act, as order granting or refusing permission under 5.7 to be final subject to an order passed in an appeal under sub-rule (2) of 5.15-A enables the State Government to issue an order passed by the Controlling Authority. It reads thus: —

"15-A. Finality of order of State Government. — (1) The State Government

may, at any time either of its own motion or on an application made to it in this behalf, call for the record of any order sanctioned by the Controlling Authority for the purpose of satisfying itself as to the legality or propriety of any order passed under this Act and may pass such orders in relation thereto as it may think fit.

Provided that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.

(2) The State Government may by notification in the Gazette designate the persons conferred upon it by sub-rule (1) its officers or authority who shall not be subject to the Chairman of the Controlling Authority.

3. The provisions of the Act have been given overriding effect in 5.17. Section 18 empowers the State Government to issue rules and regulations in conformity with the purposes of the Act.

10. The scheme of the Act is clear. Its object is to regulate and control development of building activities within a regulated area. Permission of the Prescribed Authority must be obtained by a person before undertaking or carrying on development of any site or erection etc. of any building in the regulated area. The permission is to be sought by making an application in the prescribed form. Permission must be granted or refused by an order in writing and where it is refused, the grounds of refusal are to be communicated to the applicant within the prescribed manner within thirty days of the receipt of the application. Where orders are not communicated within thirty days the applicant making permission may call the attention of the prescribed authority to its omission or neglect by a written communication and if the prescribed authority persists with its omission or neglect for a further period of thirty days, it is to be deemed to have permitted the proposed work. The Prescribed Authority may cancel the permission if it is satisfied that it was granted in consequence of any fraudulent misrepresentation or fraudulent statement or information furnished to it. The order granting or refusing permission under 5.7(2) can be challenged or quashed under 5.15 by any person aggrieved by it. Finally attention to an order made under sub-rule (2) of 5.7 granting or refusing permission under in the provisions

of subsec (2) of S 11. This is provided in S 15(5).

11. An applicant seeking permission of the provincial authority under S 7 may be aggrieved by its refusal. He would not be aggrieved by the grant of permission. For the grant of permission has been made subject to challenge at its refusal. Obviously, a person who has the right to apply for the permission may be aggrieved by its either granting permission. He can maintain an application S 14(1) in the absence of an appeal, the grant or refusal of permission by an order made under S 102 would become final. But where there is an appeal, a order made of the appellate authority i.e. the Controlling Authority which has been made final, subsec (2) of S 11 gives a right of appeal to any person aggrieved by an order under S 7 granting permission whether the grant is made under subsec (2) of S 7 or is deemed to have been made under subsec (2) of S 7. This is clear from the language of subsec (2) which does not mention the order against which the appeal would be only in an order made under subsec (2) of S 7 unlike S 14(1) which specifically refers to S 7(2).

12. Counsel for the State says that a person may be aggrieved by the grant of permission whose personal rights may be prejudicially affected by the grant. He cites a person whose property may be adversely affected by the proposed developments in regard to which permission was sought and granted. He may be a person who may be claiming ownership in the land in respect of which permission has been granted. But some inquiry must be made to his own rights before he can claim to be a person aggrieved by the grant of permission. No such has been placed in support of his submission upon a decision of Queen's Bench Division in *Benson v. Minister of Housing and Local Gov.* (1971) 1 All ER 628. There, the owners and occupants of certain land applied under S 14 of the Town and Country Planning Act 1947 to the Minister of Housing and Local Govt. to set aside certain land. The Council, a local authority, for permission to develop that land by digging roads. The permission was refused by the local authority. An appeal against the refusal was taken to the Minister of Housing and Local Government under S 14 of the Act and an inquiry was got made by the Minister into the refusal. At the inquiry apart from the

applicants, the local authority and two landholders whose land was adjacent to that of the applicants and was being used for agricultural and residential purposes were permitted to lead evidence and were heard. The Minister did not accept the report submitted by the Inspector who had made the inquiry and allowed the appeal. He gave reasons for his decision. The local authority did not challenge the decision of the Minister but the landholders whose land adjoined the land where the development was to be made filed an appeal under S 14 of the Town and Country Planning Act. That action permitted a person aggrieved by any action on the part of the Minister to question the validity of his action on various grounds. A preliminary objection was raised to the admissibility of the appeal filed by the landowners on the ground that they were not the persons aggrieved. *Benson, J.*, who was the judge of the Queen's Bench, while upholding the preliminary objection observed, *inter alia*, that:

"Superficially there is made to be said for the view that the applicants' frustration of enjoying land not approved by the Minister's action.

If I could approach the problem free from authority without regard to the scheme of the town and country planning legislation and its historical background, the arguments in favour of the applicants on the preliminary point would be good. Permission I am assuming. The scheme of the town and country planning legislation, in my judgment, is to restrict development for the benefit of the public, whether they live close to or far from the proposed development.

The legislation vests the local planning authority under the general supervision of the Minister, sometimes at the public's request. It is plain from S 14 of the Act of 1947 that if the local planning authority is not prepared for development, there can be no appeal to the Minister of any kind. It is only if the local planning authority refuses permission or grants it on unreasonable terms that the applicant for planning permission may appeal to the Minister. It would be strange indeed if the person applicant who would have had no right of appeal to the Minister from the local authority's grant of planning permission nevertheless, from the right to apply to the

Court from the Member's grant of planning permission. I doubt whether the present applicants had any legitimate expectation in this respect.

In my judgment, the Ministers' action which these applicants seek to challenge infringed none of their common law rights. They have no rights as individuals under the Human Rights Act, as my judgment none of their legal rights has been infringed and in these circumstances it could not, in my view, have been the intention of the legislature to enable them to challenge the Minister's decision in the Courts.

Apart from the authority and the scheme of the law and country planning legislation there is, as I have already indicated, much to be said for the view that in relating public law applicants whose interests may be spoilt and the value of whose land may be diminished by the proposed developments are persons approved by the Minister's decision. I however, also apply the principle to which I have referred and I must have regard to the general scheme of the legislation. The relevant statute, in my judgment, confers no right on the applicants as individuals. Accordingly none of their legal rights has been infringed and no legal obligation has been imposed on them by the Minister's action.

15. The principle which has been accepted by the Queen Bench in the decision at the before a person can be said to be approved person, there should be infringement of his own legal right.

16. The question was examined at great length by our Supreme Court in *P. Gupta v Union of India*, AIR, 1982 SC 149. After tracing the view taken by English and American Courts in this respect, the Supreme Court chose to expand the scope of persons who could be said to be having the right to assert an action of the State or a public authority. It laid down that apart from persons who complain of personal legal injury suffered by them or a identifiable class or group of persons, a member of public having sufficient interest can maintain an action for public interest for public injury, wrong done breach of public duty or false violation of some provision of the Constitution or the law and legal enforcement of such public duty and enforcement of such constitutional or legal

provision. In other words the Supreme Court recognised that a public injury, caused from a governmental injury, can also make a member of public has sufficient interest to seek redress before a Court of law. Dealing with the question of what would be sufficient interest to give standing to a member of the public the Supreme Court observed (in para 17 A of the report) that

It is for the reason that a public interest litigation – litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, defined rights and interests or vindicating public interest, are cases in which a citizen has to and who has sufficient interest has to be accorded standing. What a sufficient interest to give standing to a member of the public would have to be determined by the Court on each individual case. It is not possible for the Court to lay down any hard and fast rule or any strict public formula for the purpose of delimiting or delineating sufficient interest. It has necessarily to be left to the discretion of the Court.

It is however, made it clear (in para 18 of the report) that –

The basic rule of standing which stands that only a person who has suffered a specific legal injury can maintain an action for judicial review. A citizen and a broad rule is evolved which gives standing to any member of the public who is not a mere busybody or a meddlesome interloper but who has sufficient interest in the proceeding.

The rule that is laid down by the Supreme Court that includes a mere busybody or meddlesome interloper and enables the Court, having regard to the circumstances of a particular case, looking up whether the proper complaining of a public injury has sufficient interest in the subject matter of dispute to give him standing to present his petition of the law or a public wrong.

17. The submission of Sri Varma that the rule laid down by the Supreme Court in *S. P. Gupta* case (AIR, 1982 SC 149) does not stand to a statutory appeal, like the case in the present case, is difficult to accept. Section under the U.P. (Regulation of Standing Officers) Act, 1958 itself enables a person,

aggravated by the grant of permission to file an appeal, which would presuppose that in such permission is accorded by the prescribed authority, at spite of the presence of the grounds upon which it should otherwise be refused under 5 (2)(a) or if the permission results the request directed to act in contravention of the Regulations issued under the Act, a permission can be made where it is an appeal by one who can reasonably be said to be aggrieved by the action of the prescribed authority and is not a mere haphazard or malicious interference. The apprehension that such may lead to unreasonable appeals and may really affect the rights of those who have obtained the permission from the prescribed authority by proceeding the period during which they have been locked up in hospitals and give a hassle to anyone on the street to hinder the activities or progress of the work pursuant to the permission granted may reasonably be avoided but on closer scrutiny it would be clear that unless sufficient interest is established by the person standing the grant of permission and he approaches the appellate authority within a reasonable period an appeal at that instance would not be maintainable. The circumstance that the grant of permission may be resisted in various appeals may indirectly cause some harassment in the majority of the permission is a matter of appeal, yet the consideration of ensuring redress for public injury arising from breach of public duty and arbitrary decision affecting the rights of public persons by a statutory authority has over-weighs the consideration of harassment to the recipient of the permission. The extensive influence and considerations which upon frequently affect the action of statutory authorities in their conduct up today, compel the Courts of law to give the current business of law while suppressing the provision of a statute. The appellate authority would reasonably examine at the very inception a permission about the standing of the appellant before proceeding to deal with the matter on its merits. Any error on its part can be corrected through suitable statutory remedy.

16. The question is such case whether a person standing the grant of permission is an appeal before the Controlling Authority is on a Review before the State Government is a mere haphazard or malicious interference or has he sufficient interest to do so. Would

intentionally be answered upon the facts of each case. The nature of objections that are raised by the appellant on the likely effect of the execution of the work or development under the permission granted upon him or persons like him, would be considerations upon which would depend the right to maintain the appeal on the merits. For example, if the execution of the work permitted to be done is likely to result in a gross nuisance for the people in the neighbourhood or seriously or substantially affect the environment of the neighbourhood or may result in reducing the standard of pollution or seriously deteriorate the social economy, a map should prevent the authority standing to avoid the abuse of the public authority. The circumstances justifying the grant of standing to an applicant in lodging a may be so diverse and numerous that it is difficult to enumerate them. However, the reasonable one of them being a public injury and violation of public interest in the public, challenging the action of the statutory body can be applied before determining the question whether the appeal or review should be entertained.

17. A fact in question C-4 which is a copy of the grounds of appeal filed by the President and Secretary of the Parish before the Controlling Authority against the grant of permission to the Senate, would be enough to suggest any reasonable person that the appellant Parish is not a mere haphazard or malicious interference with the matter. Whether the grounds raised in the appeal are justified or not is not being gone into in these proceedings for they have to be judged by the authorities under the Act at the first instance. The second question is whether an applicant raising these grounds can be characterized as a person who does not have sufficient interest to maintain an appeal. In that, the answer is already in favour of the appellant.

18. The relevant order of the State Government says that the appeal before the controlling authority was barred by limitation. This view has been upheld as correct by the petitioners Parish before me. It has been upheld as correct for the Senate.

19. In para 2 to 3 of the next petition it has been stated by the President that on Nov. 7, 1993 when the President and Secretary of the Parish visited the office of District Judge at Rajahmundry, they found the proposed District Judge of Rajahmundry who they found that there was provision for residential area within Rajahmundry. After further inquiry and

Appellant sought the members of Mahalla Panchayat to an application for copy of the management plan was made by the Panchiat on Sept. 15, 1983. The copy was ultimately received by them on Oct. 17, 1983 and the appeal before the Controlling Authority was filed on Oct. 21, 1983. The appeal was then within the permitted limitation statutory days from the date of the knowledge of the order of acquisition. Aug. 9, 1983. The learned official has dealt with the question of limitation in para 32, 33 and 34. It has been read without paragraphs that an application for a copy of the management plan was filed by the Panchiat on Sept. 15, 1983 and on the next day an application for signature of the sanctioned plan was made before the Panchiat Authority, by Gurdas Singh, a member of the Panchiat who initially made submission of the plan on Sept. 15, 1983. The appeal being not filed within thirty days of the date of the knowledge of the order of process acquired by limitation. The order of the Judge Government of India 1983 says that the appeal should have been filed within thirty days of Aug. 9, 1983 which was the date of the receipt of the plan. It further says that the Controlling Authority was in error in considering liability as the presentation of the appeal under S. 5 of the Limitation Act when there being any application or prayer for consideration. The provision refers only upon the decision of the Court in *Lakshmi Lal Bhagwanrao v. State of U.P.* (Civil Appeal No. 1500 of 1975 decided on July 9, 1984).

26. The submission of the Panchiat within the period of limitation would start running not from the date of the order of Aug. 9, 1983 but from the date when the Panchiat, which was aggrieved by the decision, came to know thereof. The arguments are based upon the decision of the Supreme Court in the case of *Harish Chandra Roy v. By Land Acquisition Officer*, AIR 1941 SC 158 where it has been held that the date of the acquisition purpose of provision (A) of S. 18(2) of the Land Acquisition Act must mean the date when the land is either compulsorily or otherwise taken possession by law either actually or constructively and therefore will be unreasonable to restrict the word in a literal or mechanical way. Reference was also placed upon *Lal Chand v. Dist. Judge, Mathura*, 1987 AIR 1246 in which the date of

the order under S. 18(2) of the L.P. Acquisition of Ceiling on Land Holdings Act, 1948 was interpreted to mean the date when the aggrieved party came to have knowledge of the order applying for duration of the Supreme Court in *Raja Harish Chandra* against the order upon the decision of the Court in *Ghanshyam Upadhyay v. State of U.P.* (1984 18 ALJ 442) (1984 AIR 1246) to the same effect.

27. The question for the Court was that the question whether the date of commencement of limitation should be from the date of the knowledge or it would be the date of the receipt namely Aug. 9, 1983 need not be gone into as there is no dispute that limitation shall start running from the date of knowledge the appeal was, in any case, barred by limitation. Assuming, proleptically the arguments, that the Panchiat came to have knowledge of the decision under S. Aug. 9, 1983 only on Sept. 15, 1983, there was no prohibition for not filing the appeal within thirty days thereof. Further, the appeal filed after Oct. 17, 1983 i.e. on Oct. 21, 1983 was clearly barred by limitation. Section 5 of the Limit. Act does not apply nor does S. 18(2) demand. The same when in obtaining the copy of the order submission could not be excluded. The decision of the District Bench of the Government of India 1983 of 1975 which says that the provision of S. 5 of the Limit. Act are inapplicable proceedings under the L.P. (Regulation of Building Operations) Act, 1958 is a weak proposition as a single Judge. The consequence of delay in the presentation of appeal by the Controlling Authority under this provision was therefore bad. The question is whether the time taken by the Panchiat in obtaining a copy of the order could be substituted for computing the period of limitation. The contention is particularly under S. 17(3) of the Limit. Act which according to the learned counsel for the Panchiat, was applicable in the instant case on account of S. 19(2) of that Act. Several reasons were raised. It is not necessary to discuss them in more or less more details of the Supreme Court in *Adams v. Turgay* (Civil Appeal No. 1144 of 1977 - decided on July 18, 1980) (reported in AIR 1981 SC 1379) in that case the question was whether the provision of S. 5 of the Limit. Act, 1963 would be avoided for computing delay in the filing of an appeal before the Calcutta under S. 17(3) of the Calcutta Panchiat (Regulation of Building Operations) Act, 1958 and



Agricultural Lands Act, 1960. The Supreme Court albeit holding several of its member decisions void the rule stated in the absence of any express provision in that regard, the provisions of the Law Act 1962 would not apply to proceedings which are not proceedings before a Court. This is what the Supreme Court said.

It is well settled by the decisions of the Court in *Town Municipal Council, Ahmed v. Presiding Officer, Labour Court, Hubli*, (1970) 1 SCR 34 (AIR 1969 SC 1236), *Narasimha V. Jais v. Life Insurance Corp. of India* (1970) 1 SCR 396 (AIR 1970 SC 305) and *Bachu Devi v. Narmada (as Proprietor)* (1974) 2 SCR 563 (AIR 1976 SC 175) that the provisions of the Law Commission Act, 1962 apply only to proceedings in Courts and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or tribunals or tribunals. notwithstanding the fact that such bodies or tribunals may be constituted under specified powers conferred on Courts under the Code of Civil-Criminal Procedure. The Collector before whom the appeal was preferred by the appellant, hence, under 114 of the Act not being a Court, the Law Act, in such, had no applicability to the proceedings before him. But even in such a situation, the relevant special statute may contain an express provision conferring on the appellate authority, such as the Collector, the power to make the prescribed period of limitation on affidavits, cause being shown by laying down that provisions of 5-3 of the Law Act shall be applicable to such proceedings. Hence it becomes necessary to examine whether the Act contains any such provision enabling the Collector to make the provisions of 5-3 of the Law Act for extension of the delay in the filing of the appeal.

12. The decision of the Supreme Court in *Comptroller of Sales Tax, U.P. v. Mahant Das & Sons* AIR 1977 SC 227 was also considered in a case where the remedy by before the Judge (Revenue) who was a Court. The Supreme Court had upheld the applicability of 5-3(2) by virtue of 5-3(3) of the Law Commission Act 1962 in the case of a revision under the U.P. Sales Tax Act filed before the Judge (Revenue) who was admittedly a Court under 5-12 of the Act.

13. In the instant case, there is no dispute that there is no express provision in the U.P.

(Regulation of Building Operations) Act, 1956 making provisions of the Law Commission Act, applicable to the proceedings under it. Courts clearly therefore provisions of 5-12(2) would not apply to an appeal or revision filed before the Controlling Authority or the State Government. In the view of the matter, it is not necessary to examine the correctness of the objection raised on behalf of the State that order of the order of suspension is not required to be filed before the Controlling Authority while filing an appeal before it so that there is no jurisdiction for the Tribunal to seek extension of time taken in allowing the order of that order accompanying the period of limitation for the appeal. Even on the assumption that the filing of a copy of the order was necessary, the appeal before the Controlling Authority not being a proceeding before a Court and there being no specific provision in the U.P. (Regulation of Building Operations) Act, 1956 to exclude the same or before or to consider the delay in the presentation of the appeal by reason of 5-3 or 12 of the Law Commission Act, the appeal filed on Oct. 21, 1981 by the Petitioner before the Controlling Authority was clearly barred by limitation. The State Government was not in error in taking this view.

14. The procedural order of the State Government is also challenged on the ground that it could not be passed by an officer lower in rank to the one who passed the order of Controlling Authority. The argument is sought to be founded upon the provision contained in 5-15(4) of the Act which says that the State Government must delegate its power under sub-section (3) to any officer or authority who shall not be inferior to the Chairman of the Controlling Authority. It is not that the Chairman of the Controlling Authority, was an officer of the rank of Commissioner while the impugned order of the State Government was passed by a Special Secretary. It is not submitted to the Chairman of the Controlling Authority. There is no dispute to be made without appreciating the fact that the State Government itself has passed the original order and has not delegated its power to any other authority. The Special Secretary may have been entrusted with the function of dealing with the revision applications under the U.P. (Regulation of Building Operations) Act in the situation made of 41 of the Law Commission under the rules of business under

Art. 166, 3 of the Constitution. Such authority does not amount to delegation of power as there is no undertaking by the principal Sec. Magistrate Singh v. State of Punjab AIR 1974 SC 2893. In that case it was since the occurred in para 31 that

"A law is not merely taken a decision by the court do a law-delegation of his Ministry. He does it on behalf of the Government. The Officers are the functionaries of the Government and not independent. When a functionary is entrusted to a Minister and there are performed by an official representative of the Ministry a department, there is no law no delegation because conceptually, the act or decision of the official is that of the Minister."

The order of the State Government cannot be treated to be made on this account.

26. The Petitioner also says that the State govt. order had transferred three persons belonging to scheduled caste which was read on account of S. 157 A of Cr.P. P. Zamindar Abidulla and Ladd Beharai Act. The Addl. District Magistrate, Agia declared these members of land comprising of an area of 18 bighas 11 kharas and 4 kharas and 10 auns by order dt. Aug. 27/1964 and possession thereof was taken by the State Government in which the land had remained S. 157 on Jan. 21/1964. While challenging the order of the Addl. District Magistrate in Writ Petition Nos. 1281 and 1282 of 1964 the State and the respondents supported the fact that the State Government had already taken possession obtained in all its order under from the Court except their illegitimate. However a reference to the fact stated by the scheme of the State for submission had taken in the State Government which had taken possession thereof the State Government could not possibly approve the scheme which had, of course, in its support on the ground. Even though the members of the State Government is a claimant that issue of the status through application dt. Jan. 15/1965 supported by an affidavit filed on behalf of the Petitioner. The State Government's order made the point under the impugned order. These facts are covered by paras 21 while was put on. The State has not those allegations against the State Government's affidavit, it says that the transfer was valid because at the time of the transfer, the members had been in the members of the scheduled caste and had

become Muslims. The actual position over the land is question not of the State. And as we said the matter is not put before the Court.

26. The members of the members of the petitioner group is not to be put on by the Court as Writ Petition Nos. 1281 and 1282 of 1964 whether still pending. At the same it would not be appropriate in the present position to hold in favour of the petitioner. Further on the ground. Moreover when the State Government has chosen not to go into the members of the group that the appeal filed by the Petitioner before the Consulting Authority was turned by limitation and that was within State Government had been found not to suffer from any apparent error of law.

27. In consequence the petition fails and is dismissed but in the circumstances of the case the parties are left to bear their own costs. The ad interim order shall stand discharged.

Prayer granted.

1984 A.J.L. 1 168

R. R. BETH AND V. DUEBY II

Madan Gopal Agrawal, Petitioner v. The District Magistrate, Buxi and others Respondents

Civil Appeal No. 107 of 1974 D/17/12/1965

(A) R. P. Stamp Rules (1942), R. 124, 125 - Cancellation of license of stamp vendor - Petitioner gave to vendor in underrable stamp in at on Jan 1965 - Cannot be a ground for cancellation of his license

Action against the stamp vendor under R. 124 of the Rules could be taken only for some act or omission on his part in discharge of his duties under the R. P. Stamp Act and Rules issued thereunder. Hence when the permission by the vendor to underrable stamp was on his part and he acted in accordance of the Rules, District Magistrate was held not legally justified in cancelling his license under R. 124 of the Rules on this ground.

(Page 4)

C. 1984/1984/19/ADAC

(B) U.P. Stamp Rules (1948), R. 156 —  
Cancellation of licence of stamp vendor on  
ground of selling of stamps of lower  
denominations — Fraud — Estoppel

Where the licence of a stamp vendor was cancelled on the ground of selling of stamps of lower denominations, even if initial failure may occur, could he claim against the vendor for selling of stamps of lower denominations instead of higher denominations, it was to be established by the appellant vendor that the stamps sold by the vendor to the vendee were to be utilised by each of them for one single document. For instance, according to the appellant parties, the petitioner vendor sold two stamps of Rs. 75/- each to the vendee who utilised the stamps for a sum of Rs. 150/-; how if the stamps of Rs. 150/- were to be utilised by the vendee for two documents then it would be said that the petitioner should have sold two sets of stamps of Rs. 150/- and one of Rs. 75/- but suppose the vendee utilised the stamps of Rs. 150/- for two transactions of Rs. 75/- each, the petitioner committed no illegality or conspiracy in supplying two sets of stamps of Rs. 75/- each. (Para 5)

**Stamp Agent for Petitioner, Working Council for Respite.**

**ORDER.** — The first petition is directed against the order dated 27-10-1975 of the District Magistrate. Each contending the petitioner's licence for vend of stamps under R. 154 of U.P. Stamp Rules the matter referred to in the Rules.

2. It appears that the petitioner who has been selling stamps for two several years under the licence granted to him by the District Magistrate Bhub under R. 154 of the Rules was arrested by the District Stamp Officer vide his letter dated 26-3-1976 due to his being so twice being suspended by the District Magistrate. Subsequently, on 3-4-1976 a charge sheet was served upon him. The petitioner submitted explanation to the charge sheet on 23-10-76 stating that none of the charges mentioned in the charge sheet were made-up against him. He also filed affidavits of several persons to disprove the charges levelled against him. On receipt of the explanation of the petitioner the District Stamp Officer sought some clarification from the Tehsildar Raigarh and then submitted his report to the District Magistrate on 17-10-76 stating that the charges

against the petitioner were proved. The District Magistrate accepting the report of the District Stamp Officer cancelled the licence of the petitioner on 24-10-76. Aggrieved the petitioner has come up to the Court for relief under Art. 226 of the Constitution.

3. We have heard the learned counsel for the parties and have perused the record.

4. The charge sheet served upon the petitioner contained only two charges, first charge against the petitioner was that on 25-10-1975 one of the petitioner's agent on his own had issued the buying of a certificate and had falsified the price value the second charge against him was that instead of selling stamps of higher denominations he sold stamps of lower denominations to three persons, on 21st and 28th March 1976. The explanation of the petitioner to charge No. 1 was that neither the agent of 25-10-1975 had taken place at his own nor the person involved in the said matter had any concern with him. The explanation to the second charge was that the stamps of higher denominations were not available in the Treasury from 21st to 28th March 1976 and hence he had no option but to sell the stamps of lower denominations in accordance with the instructions contained in the circular issued by the State Government. From the materials on record it appears to us that the petitioner had no direct concern with the stamps of 25-10-1975 but even assuming that one of the persons involved in the matter had been acting on his own prior to the vendee no person could legally be liable against him under R. 154 of the Rules on this ground. The conduct of the petitioner purchasing the undoubted stamps to sell on his own may have been amenable to some administrative action by the authority purporting him to occupy the post but it had no connection with the discharge of his duties as purveyor of the licence issued to him under R. 151 of the Rules. Action against the petitioner under R. 154 of the Rules must be taken only for breach of contract on his part in discharge of his duties under the U.P. Stamp Act and Rules issued thereunder. Since the petitioner by the petitioner to undoubted stamps is not in the said document would any provision of U.P. Stamp Act, Rules or constitution of licence the District Magistrate cannot legally justify in cancelling his licence under R. 154 of the Rules on that ground.

5. Coming to the second charge levelled against the petitioner we find that from the own case of the opposite parties stamps of higher denominations were not available in the laboratory between 21st to 25th March 1974 and therefore the petitioner submitted absolutely irregularity or irregularity, according the stamps of lower denominations to a few persons during that period. Moreover when it was proved that all the stamps sold by the petitioner to the persons concerned during that period were in fact not issued then for one single transaction for which there is no material on record, no trace could legally be taken against the petitioner under R. 124 of the Rules on the ground of irregularity or irregularity of stamps of higher denominations instead of higher denominations to a few persons. For instance according to the opposite parties the petitioner sold two stamps of Rs. 75/- each called 'Nanda Devi' who wanted the stamps for a man of Rs. 100/- New ridge stamp of Rs. 100/- were to be issued by Smt. Nanda Devi for one statement that it could be said that the petitioner should have sold her one stamp of Rs. 100/- and one of Rs. 50/- but suppose she wanted to value the stamps of Rs. 100/- for one statement of Rs. 75/- then the petitioner committed no irregularity or irregularity in supplying her two stamps of Rs. 75/- each. Similar will be the position with respect to stamps sold to Mahesh Singh etc. In other words, before any trace could be taken against the petitioner for selling of stamps of lower denominations it was to be established by the opposite parties that the stamps sold by the petitioner to Smt. Nanda Devi and others between 21st to 25th March 1974 were to be issued by each of them for one single transaction. Therefore a no-material is found in proof that the stamps sold by the petitioner to Smt. Nanda Devi and others were to be issued by each of them for one single statement in our opinion the District Magistrate was not legally justified in taking any action against the petitioner under R. 124 of the Rules on this ground as well.

6. The petitioner has also challenged the unquipped order of the District Magistrate on the ground that it was not a speaking order but in case of one above findings it is not necessary for a speaking order on this point.

7. In the result the writ petition is allowed and quashed with costs and the order dated 19.07.74 of the District Magistrate is quashed.

Passion at Madras

1980 JUL 11 1 479

H N SETHAL, C.J. AND  
N N MITTAL, J.

M/s. Ram Narain Hardware Store and another  
Petitioner v. Ashwin K. V. S. Senthil Ltd and others Respondents

Civil Misc. Writ Pet. No. 1758 of 1974 D  
29.12.1980

§ P Co-operative Societies Act (31 of 1964), s. 19-A(1) — Recovery of dues by Agricultural Co-operative Society — Issuance of recovery certificate by Registrar — Registrar is bound to inform and hear members before issuing recovery certificate

The Registrar is bound to inform the members of the society about the plan made by the society against him and to hear him before issuing any recovery certificate in respect of the dues made by the Agricultural Co-operative Society. Where this has not been done the recovery certificate cannot be issued. (Para 1)

R C. Senanayake and V. M. Senthil for Petitioner, Standing Counsel and H. S. Rajan for Respondent

H N SETHAL, J. — Ashwin K. V. S. Senthil Ltd and Co-operative Society respondent under the Co-operative Societies Act. It appears that the petitioner entered into certain business with the Co-operative Society in the year 1970. The Co-operative Society claimed that a sum of Rs. 21,000/- was due to them from the petitioner. In due course the proceedings for recovery of the said amount together with interest thereon were commenced; the petitioner wrote a recovery certificate issued by Inspector No. 1, Urban Assistant Registrar Co-operative Societies under Section 19-A of the Act. In pursuance of the recovery certificate issued by the Assistant Registrar the Collector, District Madras, took steps to recover the said amount in respect of land revenue. In due course the Action of the Co-operative Department approached the petitioner on 2 orders upon him to pay the said amount.

CIVIL SUPPLY, K. R. SETHI

Appointed the petitioner to apprehend that court for what under Article 136 of the Constitution.

3. According to respondents, the amount claimed by the Co-operative Society was not due from them. In fact, as a result of the transaction entered into for dues and the Co-operative Society, the Co-operative Society was liable to compensate them for the damages suffered by them. They also claimed that as the petitioners were not the members of the Co-operative Society, the dues could not be recovered from them under the provisions of the Co-operative Societies Act. Further while the dues were sought to be recovered, the petitioners approached the District Magistrate/Collector of the district and submitted that due the recovery which was being sought to be made against him was illegal. The District Magistrate on 28th August, 1975 made an order impeding the Assistant Registrar to require any the matter and thereafter to take steps only for realisation of the amount against the only to due from the petitioner. In spite of this, the respondents are proceeding to press the recovery of the amount without making any enquiry.

4. Respondent No. 1 i.e. the Co-operative Society has put an application to restrain the petitioner in the writ petition. According to the respondents, the petitioner was a member of the Co-operative Society which was an agricultural credit society and the provisions of Section 85 A of the Co-operative Societies Act were fully applicable and the recovery proceedings initiated on the basis of the certificate issued by the Assistant Registrar were perfectly legal and in order. The respondents, therefore, claimed that no case had been made out for interfering with the recovery proceedings in various stipulations under Article 136 of the Constitution.

4. The statement made in various affidavits bring out that the Assistant Registrar has issued the recovery certificate without informing the petitioner whether he wanted to retain the amount as claimed to be due from him by the Co-operative Society. Section 85 A of the Co-operative Societies Act runs thus:

85 A. Special provision for recovery of certain dues of agricultural society (1) The Registrar may, on an application made by the

Society referred to in section 24 or an agricultural credit society for the recovery of amounts of any loan advanced by it or any certificate issued to any member and on its furnishing a statement of accounts in respect of such loan and after making such enquiry if any, as he thinks fit, issue a certificate for the recovery of the amount due.

(2) A certificate issued by the Registrar under sub-section (1) shall be final and conclusive proof of the dues which shall be recoverable as arrears of land revenue."

5. It is a fact that under sub-section (1) of Section 85 A, after an application has been made to the Registrar for recovery of amounts of loan advanced by the society, the Registrar has been given discretion to make such enquiry into the claim made by the Society as he thinks fit. This provision, however, does not state that while issuing recovery certificate, the Registrar exercise authority to investigate of actual payment. As and when an application is made to the Registrar for recovery of loan or certificate of loan from any debtor, the Registrar has an acquaintance with the principle of actual payment unless the debtor conveyed about the claim made by the society so that the debtor may approach and satisfy him about the following matters:

(1) That the debtor is not a member of the Society.

(2) That the amount sought to be recovered is not due from advanced by the Society to him.

(3) That the amount claimed has either been wholly or partly paid up.

6. It is also the fact that the petitioner has shown cause that a discussion arises with the Registrar about the recovery of the certificate of the case, held such enquiry as the matter as he thinks fit and proper. In the instant case, it is clear that although the petitioner wanted to contest their liability, the Registrar issued the recovery certificate to the Collector without affording them any opportunity to place their various before him. The respondents persisted in recovering the said amount as arrears of land revenue despite the order made by the Collector under 8-190 regarding the Assistant Registrar to look into the matter before proceeding to recover the amount from the petitioner. On the ground that the land is for of the District Magistrate was not or brought

to the owner of the property. Be that as it may, it is already explained, the Register was found to, at least inform the petitioner about the claim made by the society and to hear both brother, making any necessary verification as to payment of the claim made by the Co-operative Society. As this has not been done, the owner of the property is putting the recovery certificate issued to be returned.

7. In the result, the petition succeeds and is allowed. The impugned recovery proceedings are quashed. If a borrower made claim that the order will be issued in favour of the Register to issue bank recovery certificate upon the petitioner after allowing them an opportunity to substantiate their version. Petitioners are directed to bear their own costs. The amount of Rs. 2000 deposited by the petitioner under the interim order made by the court shall be deposited all in accordance with the orders of the court regarding issue of bank recovery certificate and may now be released by the Register.

Prison allowed.

1986-ALL.L.J. 873

A. N. DURGITA J.

**State Bank Gupta, Petitioner v. Shri Ghanshyam Lal and another Respondents**

Civil Misc. Writ Petn. No. 709 of 1986 (D/- 1-10-1986)

**S.F. Urban Buildings (Regulation of Leasing, Rent and Eviction) Act (II) of 1975, S. 30(4)**

— Unconditional deposit of rent — Tenant denying ownership of landlord and depositing rent with creditors, that same should not be given to landlord until he was found owner — Deposit is not unconditional

Where as a rent for sections and rooms of rent the tenant, while depositing the rent had denied the ownership of landlord and had advanced a condition that rent should be kept as deposit on the court and should not be paid to landlord till he was found to be the owner of the premises, it could not be said that the tenant had made an unconditional deposit as contemplated by S. 30(4) as so to enable him to claim benefit of such section.

(Para 18)

ALL INDIA BARRISTERS ASSOCIATION

The situation of deposit under S. 30(4) is a protest to conditional circumstances, except as the court permits that the tenant has committed default in payment of rent due to the landlord and to obtain such a summons under S. 30(4) was ensured, but with a clear intimation that the tenant should deposit the amount of rent, sums of ten ru. in the court unconditionally so that it might be paid to the landlord. The very nature of deposit under S. 30(4) would that be frustrated if deposit was not made unconditional. (1976) 5 ALL LR 413 Disapproved. (Para 8 & 9)

**Case Related Chronological Para**

1981 ALL LR 1623 1986 All India Civil App. 1986 SC 1726

(1976) 5 ALL LR 413

**A. N. Durgita, for Petitioner, facing Court Respondents**

**ORDER** — The petitioner has filed the present petition under Art. 226 of the Constitution of India for quashing by means of certiorari the judgment and order dt. 31-3-1986 (Annexure II) of the first petition filed by Devent Judge, Allahabad.

2. In fact the facts are that the petitioner is the owner and landlord of premises No. 38/17, Pusa Road, Gurgaon, Allahabad of which the respondent No. 1 was tenant of a portion comprising of a kitchen on a monthly rent of Rs. 40. As the respondent No. 1 failed to pay the rent since 1-6-1975 the petitioner issued summons dt. 26-3-75 under S. 30(4) of T.F. Act demanding arrears of rent including interest on the rent. The respondent No. 1 was served summons dt. 3-4-75 but in spite of its service of its notice the respondent No. 1 neither paid the rent to the petitioner nor vacated the accommodation as rent. Consequently the petitioner filed a suit against the respondent No. 1 claiming a decree of possession of the premises No. 1 from the petitioner for occupation in the last petition as well as for the recovery of the amount of rent due and damages for illegal use besides the cost of the suit. Thereafter accompanied by the respondent No. 1 an annexure (para 1)

3. The trial court (Judge, District Court, Allahabad) decreed the suit with judgment and order dt. 17-11-1979 for the recovery of amount of Rs. 250/- being the

it is not fit to be payment of the respondent No. 1 from the respondent for the payment of professional and court charges. The trial court further allowed pay to the respondent No. 1 to initiate and deliver possession of the suit premises within a month to the petitioner being whereby and later respondent through the process of the court.

4. Aggrieved by the judgment and order dt. 17.11.79 concerning the suit the respondent No. 1 preferred a revision to the court of District Judge, Aligarh respondent No. 2 who allowed the same vide judgment and order dt. 20.7.1980.

5. The said suit has been filed by the petitioner under Art 226 of the Constitution of India for quashing the judgment and order dt. 20.7.80 passed by respondent No. 2.

6. The controversy in the instant case would lie in a matter coming in is whether the deposit made by the respondent No. 1 in the court would be unconditional as to repayment but to claim the benefit of S. 204 U.P. Urban Building Regulations of 1974 and Section 4 of 1972. The respondent No. 1 claim to the contention that the deposit is made by the respondent No. 1 was unconditional and would thus stand him in the benefit of S. 204 of the Act.

7. Counsel for the parties have been heard.

8. Learned counsel for the petitioner has submitted that the respondent No. 1 did not deposit the amount unconditionally as required under S. 204 of the Act and was thus not entitled to claim benefit thereof. It has been urged on behalf of the petitioner that respondent No. 1 had denied the contract of agency between him and the petitioner in the respondent No. 2 suit and he was not liable for the suit and he was not liable for the suit. The trial court in the favor of the petitioner preferred before a case to the conclusion that respondent No. 1 has not made an unconditional deposit of rent as contemplated under S. 204 of the Act and was thus not entitled to its benefit. A perusal of para 13 of the written statement filed by the respondent No. 1 would also reveal that he had deposited the amount without prejudice to his rights. The said suit would reveal that the deposit made by

respondent No. 1 was unconditional. It has further been stated in the para of the written statement by respondent No. 1 that as the respondent No. 1 being the tenant of the plaintiff (petitioner) is not acceptable to him. It was further submitted by respondent No. 1 in his statement dated before the trial court that the petitioner had clearly stated that he has objection to the payment of rent as deposited by him and shall not be given to the petitioner until he is heard and held to be the owner of the deposited premises. It is not as dispute that the court, on the other hand, order of the suit and interest were deposited by respondent No. 1. The only point for dispute is whether the respondent No. 1 has not made an unconditional deposit as contemplated by sub-section (1) of S. 204 of the Act. The very statement of the deposit under S. 204 of the Act was that deposited when it was not made unconditionally. The intention of the legislature was to protect tenant from overvalued amount on the other hand, that the court has committed default in payment of rent in the conditional to deposit such amount as required under (1) of S. 204 of the Act. It was stated by the court with a clear intimation that the tenant shall deposit the amount of rent. Once the rent is deposited in the Court, unconditionally so that it may be paid to the landlord. Here the respondent No. 1 advanced a contention that the rent shall be kept in deposit in the court and shall not be paid to the petitioner till he is heard to be the landlord. It is at that time that respondent No. 2 had not deposited the amount unconditionally.

9. Learned counsel for the respondent No. 1 submitted that in the suit of Civil Judge, Meerut G. S. Thakur (1977) AIR 1978 Meerut 100, it was held that the amount was deposited without affecting any preconditions except the protest. By merely depositing the rent under protest no condition

is imposed except that the person depositing the same suggested but was not permitted to deposit the case of the adversary. It was observed in the case *Mangal Sen v. Kanchahal* (1961) AIR Bom Civ 502 (1961) AIR LJ 1030 by the Supreme Court that the conventional deposit would only mean that it is liable to be paid to the landlord without attaching any conditions thereto. In the case of a conditional deposit it would mean that till the fulfillment of such condition the amount shall continue to deposit and not liable to be paid to the landlord. By such procedure the deposit was not deposited would not become conditional. As discussed above in the present case the amount was deposited by respondent No. 1 with conditions and was thus not treated to procedure of deposit. (Hcd 15) 30 of the Act. The condition for the payment has successfully designated the law in that case in the case of *Sen, Indar Kaur v. C. S. Tiwari*, in that case the tenant had deposited the amount unconditionally, there is no valid reason. Unconditionally payment means that the amount can be paid to landlord without any procedure being attached thereto. A mere protest is only to deny the case of the adversary but the support is of no avail to respondent No. 1 when he had unconditionally returned the payment of the amount as deposited by him in the present case. The respondent No. 2 failed to appreciate the extent of the case and alternative resources (the total of the sum as had done in *Sen Indar Kaur v. C. S. Tiwari*). The Supreme Court in the case of *Mangal Sen v. Kanchahal* (1961) AIR Bom Civ 502 (1961) AIR LJ 1030 (para 1) while examining the controversy held that the provisions of clause 10 of S. 30 will get attracted only when the tenant has in the first instance of the sum unconditionally paid or tendered to the landlord for the same amount of rent and damages for use and occupation of the building, the latter has together with amount of interest at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof after deducting therefrom any amount already deposited by him under subpara. (1) of S. 30. There is ample material on record to show that the alleged deposit was made by way of a conditional tender to the plaintiff to the landlord. It is then clear that the respondent No. 1 having not complied with the provisions of S. 30(4) of the Act was not entitled to the benefit.

10. In view of the above discussion the present documents be allowed and the findings of the respondent No. 2 which are based on erroneous assumption of law deserve to be quashed.

11. In the result the petition is allowed with costs. The judgment and order allowing the revision of 24/6/60 passed by the District Judge, Allahabad, respondent No. 2 are set aside and the judgment and order passed by the learned Judge, Allahabad, Civil Court, Allahabad are restored.

Prison Allowed

1961 AIR L J 574

H N SHUKLA, J

Vijay Sharma Malhotra, Petitioner v. State of U.P. and others Respondents

Criminal Case No. 1804 of 1961 (2<sup>nd</sup> 7/11/1961)

(A) Protection of Offenders Act (20 of 1955), S. 4 — Order restraining accused under three orders of imprisonment as well as the cost the remaining five months of Act — Order in Magistrate Court law dismissed. (Para 11.)

(B) Protection of Offenders Act (20 of 1955), S. 4 — Order restraining accused of imprisonment and fine and postponing sentence for one year provided he keeps peace and conduct of good behaviour — Further direction in order that if during that period accused was found guilty of any other offence, the above order would operate — Held, Order was illegal being arbitrary. (Para 12.)

Case National Geographical Photo

AIR 1955 Bom 110	1955 Cr L J 114	10
AIR 1954 Cal 154	36 Cr L J 181	12
AIR 1954 Cal 181	36 Cr L J 181	12
AIR 1955 Cal 27	36 Cr L J 46	12

G S Chatterjee, for Petitioner P K. Senapati and A.G.A. for Respondents

**ORDER** — The revision is directed against order dt. 27/7/1961 recorded by Mr. G. D. Debroy, J. Addl. District Judge, Jaunpur who dismissed Criminal appeal No. 152 of 1960 and affirmed the order of Mr. S. P. Verma,

HYDERABAD-15



learned First Assistant Magistrate, Jaipur dt. 7.10.1960 in Criminal case No. 786 of 1959 by which the respondent was committed under Sec. 120/104 and 106 IPC. The sentence awarded was 15 days simple imprisonment and a fine of Rs. 500 under such count. However, the aforesaid sentence was postponed for one year provided the respondent kept peace and remained of good behaviour. Prior to respondent was brought up during other offences during this period the aforesaid sentence was to operate. The respondent was ordered to execute a personal bond to the tune of Rs. 500 and furnish one surety bond for a period of one year on the said condition and that was to be released on probation forthwith.

2. This prosecution case is as narrated was that on 1.10.59 at about 8 A.M. the respondent went to the house of complainant Hameed P.W. 1 and forcibly carried a cat. While complainant objected to it he was struck by the respondent and subjected with hits, bite and kicks. It was an intervention of witnesses Ram Ujagar, P.W. 2, and Raj Shera, P.W. 3 that respondent left the cat and went away holding his cat.

3. The complainant lodged report, Dat. 24.10.1959 at Station and was later arrested on 11.10.59. He could not get himself medically examined on account of poverty and while police did not take any action under statute he filed the complaint on 6.1.1959. The complaint was taken up by the Magistrate after allowing usual procedure of its complaint case.

4. Prosecution examined the aforesaid witnesses about the occurrence and that District P.W. 4 also proved the P.B.

5. In his statement respondent denied the aforesaid occurrence and alleged his complaint to it with one Vijay Sharma who got him involved in this case.

6. In defence respondent examined Ramnath D.W. 1 and Hankey Babbar, D.W. 2, who denied this said occurrence and alleged the application of it to respondent to it with.

7. Learned Magistrate recorded the impugned order which was affirmed on appeal.

8. I have heard Sri G. S. Chaturvedi, learned counsel for the respondent and Sri P. K. Jarambhai, learned A.G.A.

9. On behalf of the respondent it was pointed out that the bonds have already been furnished by the respondent. That the sentence awarded by the learned Magistrate is untenable. A reference to S. 44 of Probation of Offenders Act/Act No. 30 of 1958 shall go to establish that the order awarded by learned Magistrate was affirmed on appeal is wholly illegal and liable to be quashed. The learned Magistrate has understood the respondent under three counts in imprisonment as well as fine and has also extended him the benefit of Probation Act.

10. Obviously an order under S. 401 of Probation of Offenders Act cannot be said to be a punishment as was held in *State v. Jagdish* reported in AIR 1959 Raj 349.

11. Release on probation is one one of the various kinds of punishments described in S. 52 of the Penal Code. An accused cannot be punished with either term released on his entering into a bond with or without sureties to appear and receive the sentence when called upon and in the meantime to keep the peace and be of good behaviour.

That the order of learned Magistrate was not in conformity with the said provisions.

12. In *Karan Bahadur Bapender* reported in AIR 1938 Lah. 41 the accused was sentenced to pay a fine and was also released on probation under S. 363 of Cr. Code of Cr. P.C. (Act No. V of 1886). Such order was struck down as illegal in *Ho. Badamt v. Bapender* reported in AIR 1934 Lah. 384 the accused was sentenced to imprisonment as well as benefit of Probation of good conduct under S. 363 of the Cr. Code of Cr. P.C. (Act No. V of 1886) was also referred to her. Such a release of the accused on probation of good conduct as well as imprisonment was held as beyond the competence of the learned Magistrate in *Kanwar v. Bapender* reported in AIR 1934 Lah. 384 the accused was ordered to be released on probation of good conduct under S. 363 of the Cr. Code of Cr. P.C. but imprisonment

was ordered on failure to furnish return return. The order was held to be illegal.

15. A further appeal from the order proceeded by learned Magistrate that if during the period concerned was found guilty of any other offence he would expose himself to the processes awarded by the learned Magistrate. Magistrate had no jurisdiction to pass such an order. He should have passed an order under S. 43 of the Probation Act. He should not have gone out of his way to pass an arbitrary order.

16. For the aforesaid reasons the impugned order is unsustainable and quashed herewith. Thus the revision is allowed.

Revisions allowed

1986 AIR 1, L 1716

S. L. TALWAR J.

Kusumgar, Prisoner v. Deputy Director of Consolidation, Mathura and others, Respondents

Civil Misc. Writ Petn. No. 4825 of 1975  
Dt. 25.11.1975

U.P. Consolidation of Holdings Act of 1946, S. 48 - Kusumgar application in respect of revision - Observation in revisional order that parties were bound - Application allowed merely on ground that in the interest of justice, Authority wanted to hear parties and thereby revision check and not on ground that observation in revision was erroneous - Held, order of authority was liable to be quashed on writ - Civil P.C. 15 of 1908, S. 47 B. 15.

A writ of certiorari was granted by the High Court quashing the order of the Deputy Director of Consolidation, Mathura, on the

ground that application was not based on reasons as under the final order (a revision) passed by the predecessor in office without recording a finding that observation made in order to revision that the parties were bound was incorrect. The Bench stated that in the interest of justice to attend to hear the parties and thereby the revision should order of Authority passed on erroneous application would be liable to be quashed as arbitrary.

(Para. 12)

If a Court or an Authority while delivering its judgment makes an observation about the facts that has to be accepted as correct by the appellate Court, and in case somebody disputes that the observation was incorrect, he should make an application to the very authority or the Court, and unless the authority itself agrees that observation was incorrect, that observation cannot be said to be without any substance. Once a revision has been decided after hearing the parties after giving notice to interested parties, that order becomes final and there is no provision for revision. A revisional application can be filed and then also can be allowed only after recording a finding that the parties were not served on the person aggrieved or that the procedure provided under S. 38 for serving notice on applicant was not followed. (Para. 4 to 12)

Case Reported Chronological Page

1983 AIR 1716	15
AIR 1983 SC 1295	15
AIR 1975 SC 882	15

R. S. Doley for Prisoner Standing Counsel, for Respondents

ORDER. - The person under Article 22 of the Constitution is directed against the order dated 19.7.75 passed by the Deputy Director of Consolidation in purporting to be in the revisional application filed by the said

claim holder No. 3, respondent No. 3. Either a number of reasons were cited including reason No. 34) 39 that by Parnell, respondent No. 2 and Jewell, respondent No. 2 against the provisions and others. Similarly reason No. 114/115 was filed by Paul Singh against Jewell no. 2 and Reason No. 16) 18 was filed by Ravi Kishan against Jewell, respondent No. 3 in the present petition. Other reasons were also filed and they were consolidated and listed together by the Deputy Director of Confidentiality and the revision was substantially allowed by order dated 18-3-76. In the second part of the order an observation was made that after hearing the parties and after perusing relevant field book and village papers, the revision was being allowed. The revision-application was filed by Jewell, respondent No. 3 put by stating that on the notice his signature was not there and he was not heard. The Deputy Director of Confidentiality did not record a finding as to whether the notice was actually effected or not, or whether he made his signature thereon or not rather allowed the revision put by stating that in the interest of justice he considers it proper to hear the parties again. The said order was passed on 18-3-76 and against the order the present petition has been filed.

2. I have heard Sri B. S. Dubey learned counsel for the petitioner. However, in spite of several nobody appears on behalf of the respondents.

3. Sri Dubey urged that when the revision was decided by order dated 18-3-76 the parties were heard and an observation to that effect was also made in the order. He referred to *State Engrs. v. Jay Government, Maharashtra, 1983 A.L.J. 791* (Supra) of *Maharashtra v. Ramesh Chandra Mehta, AIR 1982 SC 1298* and *Union of India v. T. R. Varma, AIR 1957 SC 811*. It was further urged that unless a finding was recorded that respondents No. 2 Jewell & co. not heard or that the notice was not served on him at all, or that he did not engage a counsel, the revision application cannot be allowed. It has further been stated in para 18 of the writ petition that Claim holder No. 304 was heard and that respondent No. 2 and 3 engaged one Sri Ramesh Kani, Advocate in para 12 of the petition it has been stated

that Ravi Kani was the process server who served the notice on Jewell, respondent No. 3 and has obtained his thumb impression and signature. In the view of the court it was urged that there was no participation for executing the order dated 18-3-1976.

4. Having heard the learned counsel for the petitioner I am of the opinion that the comments made on behalf of the petitioner cannot be said to be without substance. When the notice order dated 18-3-76 was passed, an observation was made that the parties have been heard. If a court or an authority while delivering the judgment makes an observation about the facts that has to be accepted as correct by the appellate court and in case somebody disputes that the observation was incorrect, he should make an application to that very authority or the Court and unless the authority itself agrees that its observation was incorrect, that observation cannot be said to be without any substance. In the instant case also unless the Deputy Director of Confidentiality recorded a finding that the observation made in para 12 of the writ petition that the parties were heard was incorrect, it cannot be assumed that that observation was incorrect.

5. Further the Deputy Director of Confidentiality while allowing the revision application did not record a finding that no notice was served on Jewell, respondent No. 3 and the process server was not heard by respondent No. 3 nor there was any finding recorded that the notice was not effected on Jewell, respondent No. 3 nor he was heard at all. In para 18 and 12 of the writ petition it has been stated that respondents Nos. 2 and 3 had engaged one Ravi Kani as their counsel and that Ravi Kani was the process server. He counsel officers have been filed to the writ petition, hence I have to accept the allegations made in para 12 and 13 of the writ petition that Sri Ravi Kani was the counsel representing respondents Nos. 2 and 3 and they were heard and that Ravi Kani was the process server who had served the notice on Jewell, respondent No. 3. The procedure for service of notice has been given in Rule 14(1) provides that at the time of delivering a document or offering service, the signature or thumb impression of the person so, when the notice is effected, shall be obtained and

record of service should be maintained as C.H. Form 31. The record in the instant case was affected on respondents Nos. 2 and 3 in view of the procedure prescribed under Rule 31 of the Rules. The Deputy Director of Consolidation did record my finding that the procedure prescribed under Rule 31 was violated. I am in respectful agreement with the view expressed in *Nabau Singh v. Sub-Divisional Officer, Meerut* (1952 All LJ 289) (appeal); *State of Maharashtra v. Ramdas Shrivastav Nayak* (AIR 1962 SC 1261) (appeal) and *Union of India v. T. R. Varma* (AIR 1967 SC 667) (appeal). The observations in these cases as to the effect that were an observation had been made under order that has to be accepted as correct unless an application is filed before that very authority and it records a finding that the observations are incorrect and without any basis. In the instant case no such finding has been recorded even by the Deputy Director of Consolidation that the observations made by his predecessor in office that the parties were joined, was incorrect.

4. There is one more important fact to be mentioned that the Deputy Director of Consolidation mentioned that in the event of justice he thinks that the matter cover dated 24-3-78 has to be set aside and the parties may be heard again. But no such power has been given to the Dy. Director of Consolidation to allow any rehearing application or serve application to be heard and without following the procedure prescribed by law. Once the service has been decided after joining the parties after serving notice on the named parties, that order becomes final under the Act and there is no provision for review. As there is no review application can be filed and there also cannot be allowed to file rehearing application. Finding that the service was not served on the person appointed or that the procedure prescribed under Rule 41 of the service rules on the instant labour was not followed. Even when it appears to be sufficient evidence that Sr. Barnakum was engaged as casual by respondents Nos. 2 and 3. Hence the Deputy Director of Consolidation was not justified in making the observation that on the record of justice he wants to hear the parties again. Once the matter cover dated 24-3-78 passed in review by the Deputy Director of Consolidation has become final, there was no scope for setting aside that order just by making

an observation that while record of justice he wanted to hear the parties again and to decide the service again. This observation of the Deputy Director of Consolidation was arbitrary and was totally uncalled for.

7. It was after facts stated hereinabove that was petition forwarded as allowed. The respondents cover dated 24-3-78 is finally quashed. As the respondents did not appear there shall be no order as to costs.

Passes allowed

HON. ALL J. J. S. N.  
(JUDGMENT BENCH)

D. M. BHA AND K. N. GOGAL, JJ.

Smt. Tay, Petitioner v. Deputy Director of Consolidation, Paschim and others.  
Respondents

Writ Petn. No. 1234 of 1983 Dt. 24-3-1983

[A] U.P. Consolidation of Holdings Act (1948), S. 48 - Review - Transfer of consolidation proceedings pending before one assistant officer to another - Order of transfer passed by Deputy Director of Consolidation while deciding revision was on judicial note held per violative jurisdiction [U.P. Consolidation of Holdings Rules (1944), R. 43(a)]

When in order of transfer of consolidation proceedings pending before one assistant officer to another was passed by the Deputy Director of Consolidation while deciding revision was on judicial note the order of transfer was held, not within jurisdiction. It is not that normally it is the Director or the Deputy Director of Consolidation who is competent to pass an order transferring the proceedings pending before one officer to another officer. In the case however the Deputy Director has not passed an order of transfer on the respondents' reach but on the judicial note deciding for revision. When a Deputy Director mentions the points of deciding a revision he is vested with all the powers of the Director. If while judicially deciding of the revision, the Director or the Deputy Director considers, rightly or wrongly, that the witness referred to whom the case is

to be recorded was based on a statement given in the returned authority to demand that the matter be dealt with after consent by another Officer of equivalent rank. Such a decision is part of the judicial process. Thus, even though administratively the Deputy Director could not pass such an order of transfer from one judicial officer to another yet while deciding a case he could pass an order if he considered it necessary for reasons to be recorded in his judgment. This is an inherent power of the superior judicial authority.

(Para 4)

(B) U.P. Consolidation of Holdings Act of 1946, S 31(4) - Consolidation proceedings - Application for permission for transfer of land recorded in such proceedings during pending cases - Permission cannot be refused on the ground that controversy with regard to title of such land was pending.

(Para 4)

#### Cases Related Chronological Page

1960 AIR LJ 349	10
AIR 1961 SC 1463	7
AIR 1971 SC 174 - 1971 (3) SCC 373	8
1970 AIR LJ 520 - 1970 AIR 908 (PNC) 53	7
AIR 1979 (3) 13	7
AIR 1981 Cal 238	7
AIR 1986 SC 67	7

Judges Singh, H. S. Sahas and D. K. Mishra, for Petitioner; L. P. Mehta, Vijay Krishna Prasad and Abhai Singh Abhai Mehta, Rajgurunathan S. Mishra, Jonathan Singh, A. S. Varma and M. Arora, for Respondents.

**B. N. GOYAL, J.** - This very process arose out of consolidation proceedings and came up for hearing before a learned single Judge who has referred certain questions for consideration to larger Bench. It is clear that the process had come up before us.

3. The dispute relates to two Khatsas, one being Khata No. 199 which was originally recorded in the name of Sant, Mahadeva widow of Satya Narain, and the other, namely Khata No. 200 which was recorded in the name of Sant, Sagar who was widow of the predecessor son of Satya Narain. During the pendency of consolidation proceedings, i.e., Mahadeva died. Thereupon her daughter Sant, Tyo and the deceased Sant, Sagar came to be rival

applicants for induction as the legal representatives. The case of Sant, Tyo was that Sant, Sagar had remained, and had work the land as joint owners with the two Khatsas and that the said Khata should devolve on Sant, Tyo herself. Sant, Sagar proposed to add the next child No. 203 which was prepared at late of the deceased Khata 199 and 200. Under S 3(3) of the U.P. Consolidation of Holdings Act, while consolidation proceedings are pending, no order which affects the nature of those proceedings can be made without the permission of the Settlement Officer Consolidation (for short, S.O.C.). Accordingly, Sant, Sagar made an application on 4-3-78 to the S.O.C. for permission to transfer the land. This application was filed prior to the date when the case was carried out and thereafter a fresh application was given after the date was carried out. Sant, Tyo objected to these applications. The S.O.C. Tandon held that as the title dispute between Sant, Tyo and Sant, Sagar was still pending, no permission should be granted at this stage. He accordingly deferred decision on the application. This order is dated 20-4-1978. Subsequently, Sant, Sagar filed a revision before the Deputy Director against this order. Deputy Director held that the question of permission was to be decided independently of the title dispute. Any order passed might application for permission could not affect the title dispute. He accordingly directed that the S.O.C. should consider the matter on merits without being influenced by the pendency of the title dispute. He further held the view that as the S.O.C. Tandon had already expressed a certain view it would be desirable that the case be heard by a different S.O.C. He accordingly directed that after removal the case shall be heard by the S.O.C. Ashwary.

4. When the matter came up before the S.O.C. Ashwary in response, was raised on behalf of Sant, Tyo that the Deputy Director had no power to transfer the case from S.O.C. Tandon to S.O.C. Ashwary. The S.O.C., however, held the view that he could not go into the validity of the order of the Deputy Director and as he (S.O.C.) was an officer subordinate he was bound to comply with the directions of the Deputy Director and to deal with the case. He however granted title to Sant, Tyo to obtain any order, if any, from a higher Tribunal or court, but in spite of three

date of issuing such further purpose money order was produced. Accordingly, he directed the case and grant of permission to be subject to two conditions: namely, that the sale may be made if it will fit O.P. Act No. 1 of 1935 permitted such sale and secondly if Sir Sargent had the sale made, the permission would be restored retroactively. In pursuance of the order of permission dated 21.5.35 Sir Sargent transferred the stock in favour of opposite parties 3 to 5 some three days later. Sir Tey filed a return appearing in order of permission before the Deputy Director. During the pendency of this return Sir Sargent died. Sir Tey got Sir Isaac Chandra Bhan opposite party No. 6 authorized as legal representative in place of Sir Sargent, "writing with and about the fact that Sir Sargent had already executed a sale deed in favour of opposite parties 3 to 5 Chandra Bhan's name having been so authorized, both parties, namely, neither and/or, submitted the Deputy Director that Chandra Bhan as legal representative of Sir Sargent did not wish to pursue the application for permission as well the fact. As made on the basis of the compromise between them the order dated 21.5.35 was set aside and the revision was allowed on 22.2.40. Note order Amendment. Opposite parties 3 to 5 later made an application before the Deputy Director contending that they had no knowledge of the revocation of the submission proceedings and that any order passed on the basis of compromise between them and not to which they dissent parties 3 to 5 were not parties could not bind the latter. As the order dated 22.2.40 was in part in so far as opposite parties 3 to 5 were concerned, they prayed that they may be brought on record and the order order dated 22.2.40 be recalled and the revision be treated afresh after hearing them. This application of opposite parties 3 to 5 was allowed on 25.3.40 vide Amendment. Thereafter the matter was heard between Sir Tey, petitioner and opposite parties 3 to 5. After hearing the parties the Deputy Director dismissed the revision and upheld the order of the S.O.C. This order of the Deputy Director ordered 25.3.40 Amendment. It is against the said order of the S.O.C. Appeal and the orders dated 25.3.40 and 24.2.40 passed by the Deputy Director that the writ petition was filed.

4. The learned single Judge has referred the following questions to the Bench:

1. Whether the Deputy Director of Consolidation while hearing the revision application under S. 40 of O.P. Consolidation of Holdings Act can exercise the powers conferred upon the Director of Consolidation under Rule 10(1) of the O.P. Consolidation of Holdings Rules 1934 for striking back the case to another Settlement Officer, Consolidation before whom further the case was pending not without cognizance of its merits?

2. Whether a person who has not served a submission application as defendant or transferee was not a party to the case at any stage can file an application for setting aside the order passed on the basis of compromise purporting to be under S. 30, of U.P. Land Revenue Act on the ground that it was an ex parte order?

3. Whether permission to transfer holding can be granted to a person whose rights as a tenant-holder are under jeopardy and the question of sale is still pending before the appellate court in respect of a part of holding?

5. We have heard learned counsel for the parties.

6. As regards the first point it is not disputed that the power to permit transfer vested under S. 30(1) of the S.O.C. The only issue raised was in respect of the order granting permission to that it was the S.O.C. itself who was competent to grant permission and not the S.O.C. Assistant. It is true that normally it is the Director or the District Deputy Director of Consolidation who is competent to pass an order transferring the proceedings pending before one Officer to another Officer. In this case however, the Deputy Director has not passed an order of transfer while submitting the sale but on the petition while deciding the revision. When a Deputy Director exercises the power of deciding a revision he is vested with all the powers of the Director. It is judicially disposing of the revision, the Director or the Deputy Director exercises, rightly or wrongly, that the submitter's interest in whom the case is to be transferred was issued it is certainly open to the reviewing authority to check that the matter be dealt with after removal by another

Effect of co-defendant jurisdiction, such a situation is a part of the judicial process. We are therefore under opinion that even though administratively the Deputy Director could not pass such an order of removal from one S.O.C. to another S.O.C. yet while dealing a justice he could pass an order that considered it necessary for reasons to be accepted by the judgment. This is an inherent power of the superior judicial authority.

7. That next, it is well noted that once said territorial jurisdiction is not lost if the authority was otherwise competent to deal with the matter. The matter involved within the power of S.O.C. and only the territorial competency of the S.O.C. Although it being depicted in Sections 24 C.P.C. Provisions has great effect to that general principle. It has also been applied in *State Insurance v. Padanayya*, AIR 1956 SC 879; *Thiruchandrar Marudai*, AIR 1970 Raj 13; *Northam Kowari v. Venkay Thomas*, AIR 1964 Raj 26 and *Kanupriya Laxmi Duggan Padmanava v. Kanupriya Laxmi Devi Kanubhai Kary*, AIR 1962 SC 283. The same principle has been applied in *State Forest Deputy Director of Conservation*, 1970 All LJ 266 by another Division Bench of the Court after discussion of various Supreme Court as well as High Court rulings. We respectfully agree with the majority of that division. It is well held that the above fifteen years now said we do not find any good reason to depart from the case. It is true that the facts of the division are not on all fours with those of the present case but the ratio of the division is certainly applicable in the present case. We are satisfied of the opinion that the S.O.C. Although cannot be held to have acted without jurisdiction in the matter.

8. As regards the second question it is true that the transferee namely, deputy parties 2 to 5 were not parties to the division which was earlier allowed in their absence on 17.7.62 with *Abdullah-H*. But if this be the objection against their competency to move an application for restoration, then it would follow that the said order of the Deputy Director dated 17.7.60 was not binding on them. If the order was not binding on them then the petitioner Sam. Twp cannot derive any benefit out of that order as against their opposite parties. We are not concerned with the factual controversy as to whether Sam

Twp was owner of the materials or not, whether those opposite parties were owners of the possession of the material or not. The fact remains that if they were not parties to the division the division would not be binding on them. Any compromise with Sam. Twp or with Sam. Twp's estate every last month of September the date of removal by Sam. Twp or their former owner be binding on them.

9. As transferred the opposite parties were necessary parties to the division, or at any rate, proper parties. It was therefore open to them to make for a division along an application or otherwise, if that be held by the fact the Supreme Court that even a person who is not a party to the division may be allowed by an application to make an appeal against that division after division would physically affect the interest, vide *Sam. Twp. Sam. Twp v. Golden v. Golden Property Ltd* (1959) 2 SCC 573. (AIR 1971 SC 215). Stating the same principle of legal importance we are so much why the transferee could not ask for the recall of the abovesaid division dated 17.7.60 which was rendered at their absence and without any opportunity to them and for a fresh division that the opportunity to them. The subsequent fresh division of the Deputy Director was passed after opportunity to the said transferee and also to Sam. Twp the petitioner. We are therefore of the opinion that there was no legal error in Deputy Director maintaining the said application of the opposite parties 2 to 5 on that behalf.

10. As regards question No. 3 it may be pointed out that that grant of permission by S.O.C. under S. 3(1)(a) cannot affect the ownership on sale. By way of analogy, we may mention that a partition granted by a Municipal Board or other Panchayat Authority in accordance with the building regulations cannot affect the sale dispute. It will be unnecessary to take this merely because of the priority of such a sale dispute the grant of the same would be irrelevant, declared. No legal principle or authority, in that effect could be granted can be the stated court for the petitioner. On the contrary it has been decided in *State v. Jagan*, Director of Conservation (1970 Pann No. 345 of 1961) and in *State v. Jagan* (1963 All LJ 194) and in *State v. Jagan*, J. that the priority of the sale dispute does not stand in the way of

possessing possession under § 1 without. We maintain the view expressed in that case. We therefore, see no impediment in the grant of possession merely because of the contrary view expressed in cases which were pending.

18. Accordingly we answer the three questions, as follows:—

Question No. 1 Yes, in the circumstances even if the Deputy Commissioner did not have the power the order of the S.D.C. would be binding in law in view of structural competency in law laid.

Question No. 2 Yes.

Question No. 3 Yes.

19. As we have heard arguments on the merits and have answered the questions as above we have not thought it necessary to go into the plea raised on behalf of the respondent parties 3 to 5 that the petitioner has already lost the battle so far as this title dispute is concerned and as that ground the petition has become infructuous. That is a matter which may be raised before the learned single judge.

20. Let the case be now sent back to the learned single judge with the affirmed answers.

Order accordingly.

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S. K. DIXIT (J.)

Delhiabad Kachwaha, Petitioner v. Sh. Ashi (and) District Judge and others Respondents

Civil Misc. Writ Pet. No. 1645 of 1992  
Dt. 14-10-1993

Limitation Act (36 of 1908), Arts. 135, 136 — Civil P.C. (1st 1908), O. 21, R. 25 — Order for delivery of immovable property in possession of respondent and for mandatory injunction — Execution of — Proceedings for execution of decree with respect to mandatory injunction issued by Sessions — It would not make decree for delivery of possession either infructuous or unenforceable. Case law discussed. (Para 12, 14)

[1993] 1. No. 814, 15A

Case Reported	Chronological Para
AIR 1981 All 140	12
(1980) F.A.F.D. No. 38 of 1974 Dt. 2-1-1980	13
(AIR) Ramnagar v. Sadhvi, Shyam	15
AIR (25) All 648	11
AIR (25) PC 360	7, 8
(1977) 18 Luck 58, 59 (Ct)	10, 11
(1984) 1 Luck 198, 200	7
(1984) 3 Luck 198, 201	7, 8

In S. D. Dixit vs. For Petitioner Standing Counsel for Respondents

**ORDER.** — The petitioner's judgmental defect has evaded the jurisdiction of this Court under Art. 226 of the Constitution with a view to get a decision that the execution proceedings are barred by time.

2. The University of Allahabad is the decreeholder. In place case was that the petitioner had illegally and without any right or title encroached upon some vacant land situated east outside the boundary walls of one of its college namely, Sir P. C. Sanyal Medical. It was also the case of the University that the petitioner had made some constructions over the vacant land. The petitioner's defence was that the University had no title in the land in dispute. He had been in possession over the same for more than 25 years and in the alternative he set up a case of adverse possession.

3. The trial court rejected the plea of the petitioner and held that the University had title above the land in dispute. It decreed accordingly. The petitioner has in appeal before the First Appellate Court and his second appeal has been dismissed by this court. The appellate portion of the order of the trial court was —

The suit is deemed for demolition and possession of the land is made three by Jans A. B. C. D. and K. M. on the plea map P.L. with possession time. The defendant's term is deemed to remove the construction from the land. A. B. C. D. and K. M. within 15 days and further possession of land to the plaintiff having which the plaintiff shall be considered get the suit done through court at the end and end of defendant. The suit is deemed to be order, progress, paper No. 104, that is the plaintiff shall have part of decree.



4. The second appeal was dismissed on July 1970 and an execution application was given in and on behalf of the University on 14th July 1972 which was dismissed in default on 27th July 1978 "in-sua-materia" for the reason of that application. Another application for execution of the decree was made on 28th April, 1978. The Decreeing Court upheld the objection performed by the plaintiff under 1-47 of the Code of Civil Procedure (hereinafter referred to as the Code) and rejected the application as being by force. The 1-5 to Additional Decree Judge (hereinafter referred to as the Revisional Court) on 2nd September 1980 set aside the order of the Decreeing Court and held the execution application valid and true. The order of the Revisional Court is being impugned in the court.

5. The petitioner's case as his residence at the University has made an application for the enforcement of the decree granting compulsory execution and obtained the application for enforcement on 28th April, 1978, again dismissed by same court on 14th July, 1978. On 13th of the January, 1980 (hereinafter referred to as the Act). The provision by the revisional court is that the decree passed by the trial court is ultra vires. The first part concerning the demolition of the construction may have become enforceable but the second part regarding the delivery of possession is null and void in view of Art. 176 of the Act.

6. The petitioner has been found to be a trespasser. He made a wrongful and unauthorized entry upon the land of the University. He did not acquire, purchase or receive possession of the property. Such a possession did not exist in the petitioner's name which the law could recognize. The University therefore, maintained an action of trespass against the petitioner. It could, upon proof of its title, seek its permanent and exclusive possession. It is stipulated in pleading to file that University is a decree for the recovery of possession has been passed in its favour.

7. The English law as compared to the decree granted plaintiff sole sole title whereas in a different context of the long duration is not applicable to this country. Had it not been for the petitioner could not have any claim

in the registration cases caused by him over the land to dispose. In *Wattahala Naranya v. Development Officer, Bhandar A.R. 1989 PC 163* the Federal Committee agreed, with approval the judgments given by *Sarvesh Prasad C.P. in Thakur Chaudhary Prasad v. Bhandar (Bhandar Chaudhary Prasad) 1989 PC 238*. In that case the learned Judge took the view that there was nothing in the laws and customs of this country to indicate the existence of an absolute rule of law that whatever is gifted or both gifted and bequeathed a part of a land or subject matter same rights of property to be retained. The learned Judge in *Thakur Chaudhary* case added that according to the usage and customs of the country, buildings and other such improvements made on land do not, by the nature of these structures, cease to become the property of the owner of the land. According to the learned Judge it was a general rule that if the who makes the improvement is not a mere trespasser but a person coming under any form title rule or claim of title, he is entitled either to remove the materials covering the land to the state or whether was before the improvement was made or in some compensation for the value of the building if it is allowed to remain for the benefit of the owner of the land. The Federal Committee posed the question as to what a grant by "mere trespasser" is considered as a title or claim of title. Their Lordships of the Federal Committee answered the question by quoting from a decision in *Goindal Prasad Singh v. Gurnam Chauri* (S.A. 1984) 1 S.A. 577, 71. According to their Lordships the learned Judge in the aforementioned case stated the law as follows:—

But in the present case, we have a trespasser who has not only entered upon the land of another and built a house thereon. We have going so far as to say, under no circumstances could acquisition by the party entered in the act of the equity date be inferred. We are clearly of opinion that no such acquisition was either pleaded or proved in the present case. We therefore think the plaintiff is rightfully entitled to require the defendant, a trespasser in possession of his land, leaving the defendant at liberty to remove the benefits of his house.

8. The University has been granted the

what of the delivery of possession of the land as well as of mandatory injunction. The land belongs to the University. Upon it the plaintiff has encroachments and, therefore, the University is entitled to stand upon its strict right. The Court has no discretion to refuse the relief of the delivery of possession as it has in the case of the relief of mandatory injunction. From the statement of the law in *Georgi Perminov's case* (1955-3) 56 AIR 191 (supra) as approved by the Privy Council in *Mahabadi case* (AIR 1957 PC 40) (supra) coupled with the legal position that a plaintiff is not required to establish his right of entry back to possession and the court has no discretion to refuse such relief it is apparent that the University could have obtained a writ for possession of land without seeking any relief of a mandatory injunction. The Court could not mean that the relief of mandatory injunction should have also been claimed. The decree for possession of land could be executed. Of course, the plaintiff could have been permitted to remove the super structure.

9. Order 157 B (2) of the Code provides for the execution of a decree with respect to the immovable property. Sub-rule (2) of the said provision provides that where a decree is for delivery of any immovable property possession thereof shall be delivered to the party in whose favour it has been adjudged, or to such person as he may appoint to receive delivery on his behalf and if necessary, by removing any person found by the decree who refuses to vacate his property. We are concerned with the execution of a decree for the delivery of immovable property in the possession of a plaintiff. There is nothing in sub-rule (1) to prevent the execution of the decree for the delivery of possession of the land in dispute to the University.

10. In *Radhika Gopal Shastri v. Brijendra Kumar Ray Chowdhury* (1971) 41 SCR 711 (1962) 10 Cal 406 (supra) of the construction made before the submission of the case, it is not understood that a mandatory decree is a matter for the decree-holder to consider after he has obtained possession. At the same time the judgment did not say that the decree-holder was to take away the materials of the building.

11. In *Mohd. Ismail v. Ashiq Hussain* AIR 1970 AIR 548 (supra) the Court held that where it appears on the existing facts that the claim of removal or demolition of the concerned structure would cause the cause of material to be broken after the demolition and the decree-holder is willing to let the cost money stand on the land, the rule laid down in (1972) 15 SCR 261, 262 (1 Cal 406) can be adopted namely that it is for the plaintiff to let the decree-holder to decide what he shall do with the construction after he goes on actual possession of the land along with the construction standing thereon. Thereby the judgment, decree could not be put in any additional expense. The if cost of demolition shall not exceed the cost of the materials and the judgment-debtor is willing to release the materials in favour of the decree-holder free of charge, and the decree-holder is willing to accept the construction, the plaintiff even need not fund the demolition of the construction the ownership of which would automatically pass to the decree-holder.

12. Learned counsel for the plaintiff has submitted that the failure of the University to submit the decree for mandatory injunction within the time specified in Art 135 of the Act has rendered the decree, decree unenforceable. According to him, since the decree for the delivery of possession of the land cannot be executed even though Art 135 prescribes a period of 12 years for the execution of such a decree, the decree then may be set aside by the Court in *Mahabadi v. Mahabadi Abdul Magham* AIR 1951 AIR 140 (supra) that in a situation where a decree for the delivery of possession and mandatory injunction, is passed by a court, the decree-holder is not bound to execute the decree within the period prescribed by Art 135 and the decree is enforceable within the period prescribed by Art 135. It is not, as it were, a good law. He further submits that the learned single judge while deciding this case has not given any reasons in support of his conclusion. It will be noticed that it is not clear from a reading of the said decree whether the defendant there was a trespasser. Confusingly applied to the case of a trespasser it is quite fully agree with the conclusion of the learned judge.

13. In First Appeal from Order No. 76 of 1974 *Rameswar v. Railway Station* (referred

on 7th January, 1980 a writ for a mandatory injunction directing the defendants to remove the concrete base erected by them on a common land and also relief of a preliminary injunction restraining the defendants from interfering with the plaintiff's right to use the land as a passage was granted. The writ was decreed and a mandatory injunction was issued directing the defendants to remove the constructions from the land in dispute within 40 days of the decree. It was also ordered that in case the defendants failed to do so, the driver/holder would get the constructions removed through Court on the expenses of the judgment debtors. This Court held that under Art. 226 of the Act the power of Injunction for filing an application for execution in respect of mandatory injunction is three years from the date of the issue of the mandatory injunction (para 40) para. There can be no quarrel with the proposition. This was not a case wherein relief for the delivery of possession had been granted under the same decree. In this case it has not been held that decree for the delivery of possession against a trespasser would become inoperative if a decree for mandatory injunction has not been executed within the time prescribed. This case is not apposite.

14. Taking up the decree for the delivery of possession in favour of the Defendant has not become either enforceable or executory either mainly because the proceedings for the execution of the decree with respect to the mandatory injunction are barred by limitation (Article 139).

15. Affidavits have been exchanged between the parties. Though the writ petition was not formally returned yet with the consent of the parties I heard the case on the footing that the same will be disposed of finally.

16. The petition lacks merit, is dismissed. However there shall be no order as to costs. Petition dismissed.

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K. C. AGGARWAL AND  
VINOD CHANDRA, JJ.

*In re Mahabadi Rajagopal Sreeni and others* Prothonotary v. State of U. P. Lucknow and others Respondents.

Civil Misc. Suit, Patna (No. 18 of 1980) Connected with *In re*. Application in Writ Petition Nos. 218 of 1972, 2201, 2264, 2462, 2475, 2664, 4466 and 4467 of 1973 (2) 413 (1975).

1. *In re U. P. Tenda Patra (Vijayar Vengayana) Adhikaryan (19 of 1972, 3 531) (re amended by Act 3 of 1980) — Constitution of India, Arts. 19(1)(g) and 21(a) — Creation of monopoly under Art. 21(a) valid — Section 22(a) not material in creation of monopoly — It does not get protection of Art. 19(g).*

Monopoly in trade of waste paper has been created by S. 3 of the Act. Article 19(1) of the Constitution as amended by the Constitution (Fort Amendment) Act, 1973, does not lay down that nothing in Cl. (g) of Art. 19(1) shall prevent the State Government from making a law relating to the carrying on by the State of any trade, business or industry, whether under exclusive complete or partial, or concurrent ownership. This provision further precludes the Court from questioning the reasonableness of a law which creates a monopoly in favour of the State itself in view of the rule as to the exclusion of the contents by Art. 19(4) of the Constitution (as amended by Fort Amendment Act 1973) which cannot be challenged in the reasonableness of the provision providing for the State monopoly. The stated provision will not stand prohibited as when provisions made by the Act, which are not demonstrably helpful to the operation of the monopoly. Consequently, Art. 19(1) does not partly subsume Cl. of S. 3 of the Act. This provision is supreme and distinct from those which provide for the State monopoly.

(Para 12, 26)

(2) *Constitution of India, Arts. 19(1)(g) and 21(a) — U. P. Tenda Patra (Vijayar Vengayana) Adhikaryan (19 of 1972, 3 531 — U. P. Act is not invalid on ground that it was in breach of Art. 19(1)(g) — Vengay*

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exercising its office of speakership by its successor — Deputy Speaker performing his duties, exercising under Act, 1974 that it was merely ML — MLs, that Act was validly passed.

(Para 24)

(C) Constitution of India, Arts. 194(1), 194 and 244 — U.P. Trade Tax (Vyapar Vyapannak) Adhikarsan (1974) Act No. 3 of 1974, S. 5 — State of U.P. Trade Tax — Introduction — Previous consent of President not obtained for introducing Bill — President's consent obtained subsequently — Previous act of S. 4 of Act cannot be held to be ultra vires.

(Para 25)

(D) Constitution of India, Art. 245, Sub. 2, List 2, Item 58 — U.P. Trade Tax (Vyapar Vyapannak) Adhikarsan (1974) Act No. 3 of 1974, S. 5(2) (as amended by April 1984) — Transport trade taxes — Levy of tax on persons or who permits was granted — Levy upheld.

Sub-section (2) of S. 5 and S. 4 of the U.P. Trade Tax (1974) Act beyond legislative competence of State Legislature.

(Para 42-43)

Levy of tax on goods and passengers carried by roads or inland water ways, even though the tax is imposed by the State, or by the distance travelled under the levy, so, the tax can be imposed on the persons, under whom persons may be made liable to permit to transport goods. This tax, at the instant case, is not on goods, but on persons. The levy was on the persons given under the Trade Tax Adhikarsan, 1974 for transport trade taxes. The law relating to do with the carrying of goods by road or inland water ways, Section 31 of Act 3 of 1974, does not restrict itself to the trade persons, which are to be carried by road or inland water ways. Transporters of the commodities which are to be carried or carrying or transporting trade persons, that tax is imposed there, not restricted by a leviable. Consequently, the legislation in the form of Entry 58 cannot be perished. Entry 58 is made for the purpose of levying tax that the which sub-section (2) of Section 5 of Act has been inserted. Taxation, in order to be valid, must have been enacted by a legislature which is competent to do so. If, therefore, under List II, a tax imposed by the State Legislature is concerned, the competence of that tax would be beyond

legislative competence of the legislature imposing the same.

(Para 31, 32)

Cases	Related	Chronological	Page
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B. C. Day and General Kothari for Petitioners, Shri. Chandra Chandra for Respondents.

**B. C. AGARWAL, J.** — This writ petition has been filed by Mr. Madan Lal Bagrodia, Gen. Transport Products Private Limited, Ban Ra Baga. Additional for a set of persons seeking the provisions of The Uttar Pradesh Trade Tax (Vyapar Vyapannak) Adhikarsan, 1974 (U.P. Act No. 3 of 1974) (hereinafter referred to as the Act) and for a mandamus directing the respondents not to collect tax on the goods bags which are exported by it from Uttar Pradesh to Madhya Pradesh or vice versa.

**2.** In 1971 U.P. Trade Tax (Vyapar Vyapannak) Adhikarsan, 1974 (U.P. Act No. 3 of 1974) was enacted to provide at the public interest for the removal of State monopoly in the purchase and distribution of trade taxes and for matters connected therewith. Sub-section (2) of Sec. 5 of the Act prescribes that goods and persons or passengers or in relation on such days or dates as the State Government may by notification in the gazette appoint and different there may be appointed for different areas of Uttar Pradesh. Section 5 places restrictions on sale, purchase and transport of trade taxes. The material provision of the section is quoted below:—

"On and after the appointed day:—

(a) no person shall sell trade taxes to any person other than the State Government or its officers or the State Government authorized

lyst in the behalf or in spite of consent of the unit in which the lands have grown.

(b) no person other than such Government, officer or agent shall purchase lands leased from any person other than such Government, Officer or agent, or collect lands having grown on any land all of which he is not owner or tenant-holder.

(c) no person other than such Government, officer or agent shall transport lands leased except in the following cases, namely:—

(i) to land

Section 18 of the Act confers power on the State Government to make Rules for carrying out the purposes of the Act. Clause (b) of sub-sec. (2) of Section 18 of the Act, as originally read, conferred power on the State Government to make Rules laying down the manner in which and the conditions subject to which permits for transport of lands leased could be issued under Sec. 3, Sec. 21 of the original Act repealed the U. P. Tenia Pata (Vyapar Vyaparan) Adhikarak 1972.

3. As a result of the provisions of the amended Act, State monopoly in the sale purchase and transport of lands leased had been created and accordingly no selling collection sale purchase village transport and/or of lands leased grown within the State could be made except under the provisions and in accordance with them.

4. In 1972 the State Legislature passed the U. P. Tenia Pata (Vyapar Vyaparan) Adhikarak 1972 (U. P. Act No. 6 of 1972). This Act amended Sec. 3 of the original Act by providing that the State Government or any officer of the State Government authorised by it in the behalf may acquire lands and conditions in such manner as may be prescribed—

(a)

(i) Permit any person referred to in sub-cl. (a) of Cl. (a) attached (ii) to sell within Uttar Pradesh any lands leased which has been made to within the manufacturers of kula within Uttar Pradesh or so because may be to export outside Uttar Pradesh or

(c) permit any person, who has purchased any lands leased outside Uttar Pradesh to bring them inside the State either for

manufacture of kula within the State or for transporting these elsewhere outside Uttar Pradesh or

(d) Permit any person, who has purchased any lands leased within Uttar Pradesh outside any area to which the Act applies to transport them to any area to which the Act applies for the manufacture of kula.

Subsection (1) of Sec. 4 of the Amending Act which amended Sec. 3 of the original Act, is material for our purpose. The result is follows:—

On A person to whom a permit referred to in sub-cl. (a) of clause (a) of sub-sec. (1) or in sub-sec. (d) is granted shall be liable to payment of such fee as may be prescribed.

5. Further Sec. 6 of the Act amended Sec. 18 of the principal Act according to State Government to require the person under which the lands leased could be transported outside Uttar Pradesh and through small. Section 3 of the Act, amended by U. P. Act No. 6 of 1972, was given retrospective effect. Rule 4 of the Rules framed under the Amending Act permits for the issue of transport permits as prescribed forms, and that the transport permits shall be subject to the conditions mentioned in that Rule. Rule 4 as originally framed, did not contemplate the levy of any fee for the grant of the permit. It was subsequently when the Rules were amended by the U. P. Tenia Pata (Vyapar Vyaparan) Adhikarak 1972 that a fee of rupees three per standard bag lands leased inside per bag by the person applying for issue of permit in Form TP-1 and TP-2. No fee was payable for other types of permit.

6. Validity of R. 4(2) of the Rules levying the fee at the rate of rupees three per bag was challenged in this case, in West Pakistan No. 380 of 1973 and other connected West Pakistan. Those persons were allowed on Aug. 26, 1979. The Division Bench held that as no survey was being rendered levy of fee was warranted. On this finding the Bench reversed the respondents from imposing a fee of rupees three per bag as contemplated by R. 4(2) of the Rules. It further directed the State Government to refund the amount of

for which had been paid during the pendency of the writ petition within a month of the pronouncement of the judgment. After the dismissal of the writ petition, the Government under Art. 263 of the Constitution promulgated the U.P. Trade Tax (Vigraha Vignamurti) (Amendment) Ordinance, 1979 (hereinafter referred to as the Ordinance) as under:—

(2) A person to whom a permit referred to in CL 14 or CL 15 or CL 16 of sub-section (2) a permit shall be liable to pay in the manner prescribed a tax at the rate of three rupees per standard bag of trade leaves.

It further provided that the tax permits which had been issued or collected or proposed to have been issued or collected under the principal Act, Bihar or Kuch Bihar shall be deemed to have been validly issued or collected in tax at accordance with the law under the principal Act as amended by the Ordinance as if the provisions of the Ordinance were in force at all material times. Section 3 of the Ordinance further stated any person aggrieved by any judgment, order or direction made by any court or authority in appeal, for revenue within three months from the date of the commencement of the Ordinance, he had made the persons application being made in such Court for whose orders of the judgments for application was filed, shall pay appropriate orders in accordance with the principal Act as amended by the Ordinance.

7. In pursuance of the Ordinance, the issue of U.P. appeal for revenue in Writ Petition No. 3852 of 1973, Mrs. Mahesh Lalilal Dore v. State of U.P. and others on 29-12-1973. Notice was issued on the revenue application on 17-12-1973. The Ordinance was repealed by the U.P. Trade Tax (Vigraha Vignamurti) (Amendment) Ordinance, 1980, U.P. Act No. 3 of 1980.

8. Section 3 of Ordinance and Section 3 of the amended Act No. 3 of 1980 contained that as a was considered necessary to amend the U.P. Act No. 15 of 1973 with a view to provide trade tax levies on trade leaves, that the permit holders should be liable to pay a tax at the stipulated rate, so that the revenue levied and collected in the way to revenue to have been levied and collected as tax, it was amended as such. Relevant provisions of the U.P. Act No. 3 of 1980 having a bearing on

the controversy in hand, are found in Secs. 4 and 5 of the amending Act. Section 4 of Amending Act deals with violations whereas section 5 with Repeat and Savings.

9. Challenging its validity of the U.P. Act No. 3 of 1980 the present writ petition was filed.

10. This writ petition has been permitted by the State of U.P. We will take up the points in the written submissions, are argued before us.

11. The first argument of the petitioners learned counsel was that U.P. Act No. 3 of 1980 does not violate the levy of tax which was collected under S. 4(3) of the Vigraha Vignamurti of 1979 and as such, the petition is maintainable in the interest of the revenue paid as tax in accordance with the decision given by the Court in *Writ Petition No. 3852 of 1973*. It was further urged by counsel with this submission that the provision of U.P. Act No. 3 of 1980 being not the same statutory force of the Ordinance repealing the U.P. Trade Tax (Vigraha Vignamurti) (Amendment) Ordinance, 1979 (U.P. Ordinance No. 28 of 1979) therefore on the Ordinance having been repealed, the revenue application in Writ Petition No. 3852 of 1973 has become infructuous and is liable to be rejected.

12. For a proper appreciation of the arguments made before us, we consider it necessary to point out that U.P. Act No. 15 of 1973 had been passed with a view to provide for the exercise of State monopoly in the purchase and distribution of trade leaves. A bare perusal of the provisions contained in the amended Act would show that in any given year a fixed no. of trade leaves to the State Government on the price which had to be fixed by the State Government. No person was entitled to sell trade leaves in any given year other than the State Government and further that no person other than the State could purchase trade leaves from any person other than the State Government. Prohibition was imposed on the right of transportation of trade leaves. It was observed that a restriction on the transport of trade leaves even before or after the sale of leaves by the Government was an essential part of the exercise of monopoly. All the trade leaves grown in the area had to be

within the State Government, within its powers could unilaterally transport trade taxes to include. The reference to transportation was the original for the purpose of giving a check on the coming of trade tax from the State forces.

13. As a result of the aforementioned cases it would be seen that monopoly had been created by Sec. 3 of U.P. Act No. 17 of 1950. Article 19(1) of the Constitution, as amended by the Constitution (First Amendment) Act, 1950 was also applied. That wording in Cl. (1) of Art. 19(1) shall prevent the State Government from making any law relating to the carrying on by the State of any trade business or industry, whether to the exclusion of private or public, or of a person or persons. This provision further prohibits the State from questioning the reasonableness of a law which creates a monopoly in favour of the State which may or may not be in violation of the article.

14. In *Alindan v. State of Orissa*, AIR 1963 SC 1247, the Supreme Court rejected the contention that the creation of the State monopoly was a part (that) to be justified by the State by showing that the restriction imposed by it was reasonable and not in the interest of general public. As a result of the First Amendment of 1951, there are no limitations upon the power of the State Government to create a monopoly in its favour. The law was passed for the exclusive benefit of citizens of Orissa or some of them only. It was held by the Supreme Court in *Kandiah Sastry A.P. & T.C. A.S.*, 1961 SC 87 that the State is competent to create monopoly trade or business that a private trade should exist without a specific legislative authorisation such as was made in Art. 298 of the Constitution, as amended in the Constitution of 1951. Although the right to carrying on trade or business is the economic power in the Union or State.

15. In *Vijaya Marathi Company v. State*, AIR 1964 Mad 1742, the validity of Madhya Pradesh Trade Tax (Vijaya Vinayam) Act 1954 was challenged on the ground that it infringed Art. 19(1)(1) of the Constitution. The Division Bench in that case rejected the contention by ruling that S. 3(1) of M.P. Act being a provision creating a monopoly in favour of the State in the trade, afterwards known was

completely protected by the latter part of Art. 19(1) of the Constitution, as amended by the First Amendment Act 1951.

16. The contention of the learned counsel for the petitioner was that Art. No. 3 of 1950 does not provide for the abolition of the levy of tax, which had been abolished by the High Court in *First Division No. 3653 of 1971*. We are unable to accept the submission. Section 4 of U.P. Act No. 3 of 1950 provides that notwithstanding any judgment or order of any court or the contrary the collection of tax would be deemed to have been done or taken under the principal Act, as amended by this Act. The aforesaid Section 4 of the Act, if it read with Sections 2(C)(a) and 2(b) of the Act, there would be no doubt that U.P. Act No. 3 of 1950 was amended with a view to give effect with retrospective effect that the person holding shall be liable to pay tax at the aforesaid rate, so that the amount levied and collected as tax may be deemed to have been levied or collected as tax. It is not to dispute that the power to legislate includes the power to legislate retrospectively as well as prospectively and in that behalf tax legislation has no difference from any other legislation.

17. We have seen above that a provision for taking of the issue of the payment, given by the High Court, was made by U.P. Ordinance No. 31 of 1971. The Ordinance has come into force on 24th September, 1971. Subsequently when the Ordinance was repealed, sub-sec. (2) of Sec. 4 of U.P. Act No. 3 of 1950 provided that the Act shall be deemed to have come into force on Sept. 26, 1971. As a result of U.P. Act No. 3 of 1980 coming into force w.e.f. 26th Sept. 1971, no time lag was left. To meet the requirement of a provision, which provided for the abrogation of the various applications filed earlier under the Ordinance, Sec. 5 of U.P. Act No. 3 of 1980 lays down that every application for review filed under Sec. 3 of the Act, pending and pending on the date of publication of this Act, shall be disposed of in accordance with the said section 3 of the Act and Adityachand requested us to be known. It is therefore not correct to argue that as a result of repeal of the Adityachand review application filed under Sec. 5 of the same chapter. Clause (1) of Sec. 5 of U.P. Act No. 3 of 1980 further has

provided that anything done or any action taken under the provisions of the principal Act, as amended by the said Bill, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act, and the provision of this Act were to have such effect as aforesaid. Consequently, we are unable to find any substance in the submission of the learned counsel for the petitioner that neither did Clause No. 22 of 1979 nor does U.P. Act No. 1 of 1980 purport to cure the defect, which had been found by the Court in *Wazir Khan* No. 2083 of 1979. While dealing with this argument, we should not forget that we have upheld that the State Legislature was competent to amend U.P. Act No. 3 of 1980. The argument of the petitioner would be dead weight, if it is separately.

18. The new submission of the learned counsel for the petitioner was that the Bill which resulted in passing U.P. Act No. 5 of 1980 was not presented to the Governor for assent under Art. 200 of the Constitution, with the certificate of the Speaker of the Legislative Assembly signed by him that a Money Bill therein. The non-compliance of this mandatory provision rendered the enactment of law as invalid.

19. The submission of Money Bill has been given in Art. 109 of the Constitution, Article 109(1) to which the signature of the Speaker is essential for the petition was correct, made as under:—

(1) There shall be introduced in every Money Bill when it is introduced in the Legislative Council under Art. 108, and when it is presented to the Governor for assent under Art. 200, the certificate of the Speaker of the Legislative Assembly signifying that it is a Money Bill.

The submission of the petitioner's learned counsel was that the certificate of the Speaker of the Legislative Assembly, signed by him, with a necessary condition for obtaining the assent of the Governor under Art. 200 and as that was not done, the enactment of law by U.P. Act No. 5 of 1980 was in contravention of the mandatory provision. —

20. On behalf of the State Government, counsel appearing before us, Mr. Bhatia, stated that a compliance of Art. 109 was made. In para 3

of the supplementary counter affidavit of Late Mahesh Tripathi, who was joined as Deputy Secretary, U.P. Mahesh Tripathi, it was stated that in the Government Order, when the Speaker of U.P. Legislative Assembly, resigned from the Speakership on the 24th March of 1979, the office, of the Speaker fell vacant, which result that Speaker's Preamble, the then Deputy Speaker performed the duties of the office of the Speaker till 17th Feb. 1980 as per the Notification No. 80-19 (Part 80) dated 17th Feb. 1980 published in the U.P. Government Gazette dated 18th February 1980. As the Speaker's Preamble, the Deputy Speaker, was performing the duties of the office of the Speaker, he certified that Bill of U.P. Act No. 5 of 1980 passed by the U.P. Legislative Assembly on 17th Feb. 1980, was a Money Bill. The Bill was presented to the Governor for his assent under Art. 200 of the Constitution with the certificate of the Deputy Speaker dated 18th February 1980. This Money Bill was received by the Governor and forwarded it to the President of India for his assent, who assented the same on March 2, 1980. It was observed that the U.P. Trade Fairs (Vishva Vigyanotsav) (Amendment) Bill, 1979 came into force and was published in the U.P. Gazette dated 26th May 1980.

21. From the facts stated above, it is clear that a vacancy had occurred on account of resignation submitted by the Speaker on Feb. 1979. As the Speaker was not available, the Deputy Speaker performed his duties. In this capacity he gave the certificate as was required by Art. 109(1) of the Constitution. With the certificate, the bill was presented to the Governor for assent. We are in line that revealed that there was no breach of Art. 109(1) of the Constitution, hence it is not possible to hold that U.P. Act No. 5 of 1980 is invalid on the ground suggested by the learned counsel for the petitioner.

22. In *State of Punjab v. Janyapat*, AIR 1981 SC 950, the Supreme Court, was called upon to deal with the legal position, which would emerge in the absence of the Speaker. It observed:—

When the absence of the Speaker is the cause of the passing of the Money Bill, the Deputy Speaker acts as the Speaker under Art. 100(2). He can effectively verify the Money Bill, under Art. 109(1) through



Art. 19(1) mentions only the Speaker of the Legislative Assembly.

23 The view of the Supreme Court was that the provision of Art. 19(1) could not be considered as mandatory, but as directory. Owing to this the holding is to be contrary to the Supreme Court decision. —

It the Commission was the necessity of providing a Deputy Speaker to act as the Speaker during the latter's absence or to perform duties of the Speaker in his office of the Speaker in vacante, it stands to reason that the Commission could have empowered a person of more confidence absolutely from the Speaker and the Speaker alone.

24 In fact according to the view of the Supreme Court when in this case even if there was some irregularity in the following of the procedure Art. 20(1) which provides that the validity of any proceedings in the Legislature shall not be called in question on the ground of any irregularity or procedural irregularity or irregularities. In legislative process attempted to argue that the matter relating to non-compliance of Art. 19(1) was not a procedure. We are not able to sustain the submission. State of Punjab v. Sarguja (AIR 1969 SC 92) is again a case of non-compliance of Article 19(1) of the Constitution. Moreover the heading under which Art. 19 is to be found in the Constitution is Legislative Procedure. This body is no rational ground for submission of the petitioners' learned counsel. In our view when the Deputy Speaker acts as the Speaker during the absence of the Speaker he can exercise the power to certify a Bill as Money Bill under Art. 109B.

25 The next submission of the petitioners learned counsel was about Article 20 of the Constitution. He urged that Art. 20 of the Constitution guarantees a right of trade, commerce and intercourse throughout the territory of India and in the tax imposed by Sec. 5 of U.P. Act No. 19 of 1952 is assessed by U.P. Act No. 5 of 1950 would impede the trading, see 7 in failure to strike down on this ground.

26 The main object of Art. 20 is to give free flow of the stream of trade, commerce and intercourse throughout the territory of

India. The object of the freedom secured by this Article is to ensure that the economic unity of India cannot be broken up by internal barriers. See *Andhra Tea Company v. State of Andhra* (1964) 1 SCR 809 (AIR 1964 SC 229). This Article is fully subject to Arts. 202, 203 and 204 of the Constitution. We are not concerned in this case only with Art. 204 it is not necessary for us to deal with other Articles. Article 204 reads as follows: —

204. Notwithstanding anything in Art. 201 or Art. 203 the Legislature of a State may by Law: —

(a) impose on goods imported from other States or the Union Territories any tax in which similar goods manufactured or produced in that State are subject, or however as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse within that State as may be required in the public interest.

The effect of Art. 204(a) is to give imported goods on the same basis as goods manufactured or produced in any State. So far as Art. 204(b) concerned it empowers the State Legislature to impose reasonable restrictions on the freedom of trade with other States or within its own territory. A Bill imposing such a restriction can be introduced in the State Legislature only with the previous sanction of the President. The idea of obtaining previous sanction is not far to seek. This has been elaborately dealt with by the Supreme Court in *Andhra Tea Company v. State of Andhra* (AIR 1964 SC 229) (supra).

27 Admittedly in this case no previous sanction was obtained before moving the Bill in the Legislative Assembly. It, however, appears that after the Bill had been passed and was presented to the Governor, he retained the same for the consideration of the President of India under Art. 201 of the Constitution. The President gave his assent on 4th March, 1950. It was subsequently that it was published in the official gazette on 10th March, 1950 and thereafter came into force.

28 The question that arises for decision is about the effect of subsequent assent. Article 203 of the Constitution has dealt with such a

controversy. It provides that the question of previous taxation by a Bill does not arise when an Act, if the Bill, is passed. However, the question of the President's sign was before the Supreme Court in the *Shankari Prasad v. State of Madras*, AIR 1953 SC 246; *Madhavlal v. State of Madras*, AIR 1953 SC 269; *Abdul v. State of Madras*, AIR 1953 SC 262. In para. 13 of *Abdul v. State of Madras* (supra), the Supreme Court said:—

"We may observe that requirement of the previous sanction of the President of the President has been satisfied. It also doubtless that the question of the President was prior subsequent to the passing of the bill by the Legislature, but that fact would not affect the validity of the impugned Act in view of the provisions of Art. 201 of the Constitution."

28. So far as State Legislatures are concerned, restrictions placed upon its ability in the public interest and generally the restrictions should be reasonable. It has been said that the exercise of the power to tax may normally be presumed to be in the public interest. The obvious purpose of taxation is for the raising of revenue without which, no Government can run. Consequently, in our opinion, the requirements of Art. 201(a) were satisfied, as a result whereof the provisions of U.P. Act No. 2 of 1950 cannot be held to be ultra vires contravening Art. 201 of the Constitution. The argument, also, that there is

29. The last point urged by the petitioner's learned counsel in support of their case was about legislative competence of the State Legislature to enact subsec. (3) of sec. 2 of the Amending Act of 1950 (29). That sub-section makes provision for levy of tax if upon three per cent of the value of goods brought on the persons to whom persons are granted permission to be charged for C.I. (a) or C.I. (b) or otherwise (that of the Act. The law is valid under the amended provision, according to the petitioner, as in the present matter the State Legislature had no competence to make such law, the same is ultra vires. The substance of the law is the grant of permit for transportation of goods into or out of the State of U.P.

30. Justifying the imposition of tax on goods (taxes), the learned Advocate General relied on Entry No. 58 of List II of the Constitution. This Entry reads as under:—

"Taxes on goods and passengers carried by road or on inland water ways."

The Entry pertains to tax on the incidence of which a tax on goods and passengers carried by road or inland water ways. Even though the tax is imposed by the State, or by the decision enacted. Under the Entry, no tax can be imposed on the persons under which a person may be transported in transport goods. This Entry has been interpreted as of a regulatory or compensatory character, in dealing with the transportation of the Entry, the Supreme Court held in *International Trade Corporation v. State of Mysore*, AIR 1954 SC 714 as under:—

"We have held that the Mysore Transport and Goods Taxation Act is a law made pursuant to the power given to the State Legislature by Entry 58 of List II. Having regard to *Andhra Tea Co. Ltd. v. State of Andhra* (AIR 1951 SC 608), AIR 1961 SC 232, *Assam Transport Corporation Ltd. v. State of Assam* (1953) 1 SCR 495, AIR 1963 SC 1438 and *Indian Tea Co. Ltd. v. State of Orissa* (1975) 2 SCR 156, (AIR 1975 SC 17) it has to be held that the power exercisable under Entry 58 of List II is the power to impose taxes which are in the nature of regulatory and compensatory measures. In the last of the cases mentioned it was said by the Court:

"Entry 58 of List II empowers legislation in respect of taxes on vehicles."

Suitable for use on roads.

31. In *Andhra Tea Company v. State of Assam* (supra), the question was considered by the Supreme Court in detail. In this case the present matter challenges was that of the Assam Tea tax on goods carried by road or inland water ways under which the State of Assam was entitled to levy taxes on goods carried by road and inland water ways. The Supreme Court upheld the validity of the provisions by holding the Act to be within the legislative competence of the State Legislature, as it was covered by Entry 58 of List II of the Constitution. In subsequent cases also, the Supreme Court upheld the validity of levy of taxes under the amended Entry of a tax levied to be compensatory or regulatory.

32. The tax in the instant case is not on goods, but on persons. The law was on the persons given under the Treaty Ports

Authority. It is for transport outside the State. The two categories do not distinguish of price by road or inland navigation. Article 19 of Law 1 on land transport refers itself to the roads sector, which would be covered by roads or inland water ways. Irrespective of the categorization, which are or be subject to control or transporting goods passed into the State, these are not intended to be treated. Consequently, the legislation on the basis of (Article 16 cannot be applied). Even, it is stated above, is liable for the purpose different than that for which the system (of Section 2 had been created).

34. It is essential to reflect upon the fact that it is not an industry, for example that is not levied. Article 16 of the Constitution provides:

no tax shall be levied or collected except by authority of law.

35. Taxation in order to be valid must have been made by a legislature, which is competent to do so. If otherwise, under Law 11 it is not imposed by the State Legislature is not covered, the imposition of that tax would be beyond legislative competence of the legislature imposing the same.

36. It was suggested by the learned Advocate General that the power of taxation was conferred a not a taxation, means, the work, judging the question of legislative competence, it is not to have a wide outlook, and it, for that purpose, required to consider the entire identity. With the permission of law, that a duty should be totally restricted which creates levy of a particular tax, one may not be specifically, but it is not possible to uphold the tax, which is beyond the legislative competence of a State, levying it.

37. We have found above that Entry 36 of List II of the Constitution itself expressly the State does not justify a measure of income. (1) of the 1 of the law is to be as it purports to levy tax on the persons situated for transportation.

38. By Art. 154 of the Constitution (as amended by First Amendment Act) (1961) also cannot be the subject in the maintenance of the provisions providing for the State monopoly. But the said provision will provide process or other measures made for the

Act, which are not intended or help to make operation of the monopoly. Consequently, Art. 154 does not afford any authority to the respondents to justify the income. It is of law, 1 of the Act. This provision is separate and distinct from those which provide for the State monopoly.

39. In *Abdulla v. State of Orissa*, AIR 1963 SC 287 (supra) after the Supreme Court laid on this controversy is relevant, which runs as under:—

"A law relating to a State monopoly, enacted at the period include in the provisions contained in the said law whether they have direct relation with the creation of the monopoly or not. The main question must be confined to assess the law relating to the monopoly in an abstract manner. Section 11 is a law of general nature, a State monopoly, the Court should inquire what are the provisions of the said law which are basic, and essentially necessary for creating the State monopoly. It is not a law enacted and those provisions which are provided by the said part of Art. 154. If these are order provisions made by the law which are subsidiary incident or helpful in the operation of the monopoly they do not fall under the said part and their validity must be judged under the first part of Art. 154.

With reference to Law 1 entered in respect and domain over those vehicles under which monopoly has been created. Consequently, the law (1) of income subsequent does not get immunity from challenge. Operation of law provision has to be justified by showing that Entry of List II under which the State Legislature had competence to enact.

40. We have already dealt with Art. 25 of the Constitution. With regard to the Act, the Supreme Court said in *R. T. Wagle* (supra) *v. State of Kerala*, AIR (1961) SC 550 as follows:—

Article 251 empowers a legislature on the taxing power of the State in place as it provides that the State shall not levy or collect a tax except by authority of law. This is to say, it is not correct to be levied or collected by a mere executive law. It has to be done by authority of law, which must mean valid law. To cater this the law may be valid, the suggested to be found must be within the legislative

competence of the Legislature requires, a tax and a surcharge for collection thereof and, usually, the tax shall be subject to the conditions laid down in Art. 13 of the Constitution.

41. Suggestion was also made by the 'learned counsel' for the State that since by permitting the State party with its 10,000 acres which it has already occupied, therefore, the State was entitled to charge for grazing, at right with respect to the same. The counsel argued that for the said purpose, as this is required to be imposed, and in each case if such action (Ch. of Sec. 3) cannot be taken by the State on the basis of Entry 16 of List II, the State should be held to have a right to make charges there for reasonable fee. The submission is not acceptable. We have don't only the provisions of the impug. Act and the constitutional provisions in mind. These provisions would show that it was subsequently (that is Division Bench in the Court held that B. 4 is invalidly struck) was added that the present rule was (that Sec. 3) subsequent, imposing, was was imposed. The Amending Act of 1978 was passed and 'Money Bill' Stat. art. 111 of Sec. 3 was a piece of legislation imposing tax. It is under the provision that the requirement is being made. It is not open to the State Government to justify its action by saying that there to be some thing, different than the

42. For what we have said above, we find that sub-sec. (1) of Sec. 3 is beyond the legislative competence. Since the validity of impug. Act depends on the legislative competence, and as we have concluded that it could not impose any tax or fee payable for transportation through Sec. 4 of the Amending Act clashing with the validation would also be liable to be held to be beyond legislative competence.

43. In the *Municipal Corporation, Corp of Ahmedabad v. New Street Spinning and Weaving Co. Ltd.* AIR (1970) SC 1250, the Supreme Court observed :-

"The most important feature of course is that the Legislature must possess the power to impose the tax. But it is a matter of degree, more or less, whether and if so, whether the method adopted is one which is within the competence of the Legislature and if so, and adequate to ensure the object of validation

if the Legislature has the power over the subject matter and competence to make a valid law, a tax or any other similar levy is valid, and make a corresponding tax to be levied for the same. The validity of a validating law, therefore, depends upon whether the Legislature possesses the competence which it assumes the subject matter and whether it makes the validation in conformity with the object which the Court has found in the statute, and makes adequate provisions in the validating law for a valid imposition of the tax.

44. The next question is whether the impug. piece of law is valid as a piece of the legislation of the State Government for imposing with respect to right to make a valid law. We have noted above that B. 4 of the Act is invalidly made providing for law was held by the Constitution Bench. The not having provided for service to be rendered to the individual's property for the same. The judgment has become final. When the judgment, the Legislature intended and imposed the old provisions only re-enacting rule sec. 3 of the Act. It is not the case that the Legislature intended that there must be actual expenditure for the State and impose a charge in the subsequent decisions of the Supreme Court, but as the old provisions have been repeated and the new provisions for the levy of tax is not possible, it upheld the law on this basis. The Amending Act of 1978 was passed as a Money Bill. Validation provided it as a law. It was suggested that validation clause of the Amending Act provides upon enforcement by those who have passed on the burden of the tax, hence the tax would be validly struck down. This is not possible to be accepted. For upholding the impug. provision, it was necessary that the same was valid. As it was not valid in 1978, with rule sec. 3 of the Amending Act.

45. We mention above the next point by holding that the law is valid as a piece of the impug. law. 1978 are beyond the legislative competence of the State Legislature.

46. In view of the above facts, the two applications filed by the State of U.P. for the review of the judgments in the two cases are dismissed with costs and rejected.

47. In the result, the two points No. 10

of 1986 onwards and is offered. The respondents are empowered from enforcing the two orders under ss. 23 of Act 1. They are further directed to return the amounts earned from the proceeds in an early date.

(4) The various guidelines in writ petitions Nos. 1033 of 1975 dated 1975, 1046 of 1975 dated 1975, 3078 of 1975, 3660 of 1975 dated 1975 and 4871 of 1975 are dropped. The provisions of these orders under 1975 are proposed under Art. 226 of the Constitution will be treated as referred for various amounts which had been paid by them.

(5) In the proceedings no order is made on order in 1975.

Order accordingly.

1986 JIL 1 1 195

V. K. KIRANPA J.

M/s. Jee Shauh Yuenpau Ltd. Chartered, P.O. 10001 v. State of Uttar Pradesh and another Respondents

Constitution, Art. 226 of 1975 (1975 JIL 1 1 195)

Provisions of Food Subsidies Act 1974 of 1974, ss. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

§ 23 A only gives power to Central Government to give directions regarding the carrying into execution of all or any of the provisions of Act and there is a duty cast on Government to comply with such directions. Provision of the Act may include a wholly framed rule under the Act regarding which the Central Government may give directions to the State Government for its compliance. Under § 23 A Central Government has been empowered to make rules defining the standards of quality for and fixing the limit of variance in price within a margin of any article of food. Power conferred under § 23 A is defined in or under the Act which has been conferred under § 23 A. (Para 14)

Where the Central Government issued instructions under § 23 A, it is not empowered for enforcing the standard prescribed in instructions for price of and procedure for making the rule under § 23 A. (Para 14) but without following procedure of application to the government the procedure did not conform to the standard prescribed in instructions. It would be national jurisdiction and liable to be quashed. Such instructions could make and to have necessary force resulting in continuing offences. Further the rule could be brought within the scope of § 23 A, i.e. making or giving of price of food before prescribed manner in which the procedure has been defined as prescribed by rule made under the Act and so rule had been framed in the above case. (Para 14)

Case Related Chronological Para  
(1982) 1 FRC 24 (1982) 1 FRC 25  
(1982) 2 FRC 18 (1982) 2 FRC 19  
(1982) 3 FRC 18 (1982) 3 FRC 19  
(1982) 4 FRC 18 (1982) 4 FRC 19

Apparition and C. A. State for Province  
A. C. A. for Respondents

ORDER. — The present application under section 482 Cr. P.C. has been filed by M/s. Jee Shauh Yuenpau Limited which is a company of and with the state to recover. A sample of the price of was taken by the Food Inspector. (M/s. Jee Shauh Yuenpau Limited) from the shop of deceased Han On of Banpur. The deceased sample was sent to the Analyst who found the sample not to be conforming to the standard prescribed by the Central Government in exercise of all power under section 23 A of the Provision of Food Subsidies Act 1974 (hereinafter referred to as Act 1). The applicant submitted through various in pursuance of a complaint filed after obtaining the necessary sanction.

2. After the applicant was sanctioned an application under section 482 Cr. P.C. was filed before the Court for recovery of the price of the sample. The sample was found to be within the standard prescribed under the Act and the Rules framed thereunder. The deceased proper made by the applicant.

for dropping of the proceedings was refused by the Chief Judicial Magistrate for his order dated 18-3-1981. Finding approved the applicant performed a removal which was later been dissolved by the District Additional Sessions Judge. Thereafter by his order dated 22-10-1981

2. Learned counsel for the petitioner in this application has urged only one point. It has been argued that on the date on which the sample of palm oil was taken by the Food Inspector there was no standard prescribed and thus the applicant could not be said to have committed any offence under the Act. Along with this affidavit paragraph 2 has been filed which goes to show the Central Government in exercise of the powers conferred by section 22-A of the Act had put in motion in various undertakes for formulating the standards prescribed. It has been argued that the Central Government is not vested with any power to prescribe standard by issuing executive directions under section 22-A of the Act. It is said that it has been placed in a dilemma of the Madras Pradesh High Court in the case of *A. L. Hameed Food Inspector Municipal Corporation Madras v. Pannu* (1963) 1 FAL 214 and a division of the Delhi High Court in the case of *B. N. Gargal Assistant Municipal Commissioner v. Madhav Trading Co. (Hd)* 1 FAL 19. A case of the High Court, *State of Punjab v. State* (1980 AIR Cr R 227) 1980 Cr LJ 761 has also been cited.

3. Learned counsel appearing for the State has not been able to show me any specific item in Appendix B to the Rules framed under the Act which prescribed standard for palm oil under date on which the sample was taken by the Food Inspector. It has however been urged that item A (1) is a standard for refined vegetable oil of coconut on the date on which the sample was taken and the standard prescribed under this item would apply to the case of the palm oil. It is easily to accept the aforesaid argument made by the learned counsel for the State inasmuch as item A (1) which prescribes standard for refined vegetable oil prescribes that there is a standard prescribed for a particular oil. The applicant is being prosecuted for oil which does not conform to the standard prescribed in the later contained in Appendix 3 to the present. The question which then falls for determination is as to whether when the sample

presented in State contained in which are 3 issued in pursuance of the powers of the Central Government under section 22-A can be said to have contained some something in conformity of an offence.

4. Section 22-A of the Act only gives power to the Central Government to give directions regarding the carrying out of execution of all the way of the provisions of the Act and there is a duty cast on the State Government to comply with such directions. From a bare reading of section 22-A, therefore, it becomes clear that there should be a provision of the Act which may include a validly framed rule under the Act regarding which the Central Government may issue directions to the State Government for non-compliance. It now looks to section 22 of the Act which confers on the Central Government the power to make rules. It would become clear that the power for defining the standards of quality for and fixing the terms of variability permissible in respect of any article of food business specifically conferred on the Central Government under the provision. The power which has to be exercised by the Central Government is different in nature than the power which has been conferred under section 22-A. A perusal of this section would show that the power has to be exercised by the Central Government normally after consultation with the committee. But section 22 of the Act is not subject to any such condition. It is by itself that House of Parliament while it is in session for a total period of 30 days and the House can make modifications in the rule or can even decide that the rule will have no effect. As has been observed above, there cannot be the use of clause that 'thereafter' I has not been agreed by the Central Government in exercise of powers under section 22 of the Act, as having the latter itself makes it clear that the standards are being issued under section 22A of the Act and secondly, the procedure for making the rule as laid down in section 22 of the Act has not been followed. In the case even which have been cited before me it has also been laid down that the Central Government has no power to fix standards under section 22-A of the Act. It is therefore clear that there was no statutory standard prescribed for palm oil on the date on which the sample was drawn. Learned counsel

appearing for this State has not been able to show that it is under a legal obligation to accept this rule as part of the public order or public policy of the State. From what has been placed in the application there cannot be any doubt that the provision was brought to the court within the ambit of section 13(1)(a) of the Act i.e. the quality or purity of the palm oil left before the respondent applicant. It may also be noted that no action has previously been taken as necessary provided by rules under this Act. As has been observed above, no rules have been framed under this Act at this time. If and by way of course of imagination the applicant would be said to have violated any provision of the Act. The proceedings which have been raised against the applicant in this respect, there are without parallel and it is to be quashed.

4. In the result, the petition is allowed and is allowed. The proceedings against the applicant in case No. 219 of 1982 pending before the Court of the Chief Justice Magistrate, Colombo are quashed. However, taking into the facts and circumstances of the case the parties shall bear their own costs.

*Prison allowed.*

# 1988 ALL L.P. 507 (SUPREME COURT)

*(From Allahabad)*

**C. CHENNAIPPA REDDY AND  
L. S. VENKATARAMAN II**

Writ Petn. (Civil) No. 161 of 1986 with Spl. Leave Petn. (Civil) No. 3621 of 1986 with Spl. P.P. (Civil) No. 680 of 1986 with Spl. Leave Petn. (Civil) No. 5064 and 4961 of 1986 C/P 24-4-1988

**Sri Lanka Customs and another  
Petitioners v. State of L.P. and another  
Respondents**

*Writ*

**Muzumdar Kumar Jain and others  
Petitioners v. State of U.P. and others  
Respondents**

*Writ*

**Shantary Singh and others Petitioners v.  
R.T.A. Varanasi and others Respondents**

*Writ*

**Cigarette and Cigar and others Petitioners  
v. State of U.P. and others Respondents**

*Writ*

**Rationalised Transport and others Petitioners v.  
State of L.P. and others Respondents**

*Writ*

**State of L.P. and others Petitioners v.  
State of L.P. and others Respondents**

**L.P. Motor Vehicle Special Provision Act  
(17 of 1976), Sec. 1(3) and 5 — Motor Vehicles  
Act (4 of 1939), Sec. 1(3) (as modified by  
Amendment Act (6 of 1969) — Amendment  
under Sec. 5 of L.P. Act — Highlight for —  
Private operators giving stage carriage on  
certain parts of which developed nationalised  
routes, nationalised in the complete exclusion  
of private operators, after 1-4-1971, date of  
operation of L.P. Act of 1976 — Such operators  
does not operate as operators in part  
of amendment under Sec. 5 of L.P. Road  
Transport Services (Development) Act (5 of  
1976), Sec. 1(3)(ii)**

Where the private operators filed their stage  
carriage on routes which had a common  
overlapping sector with nationalised routes  
which were nationalised in the complete  
exclusion of private operators after 1-4-1971  
the date of operation of L.P. Road Transport  
Services (Development) Act 1976 an  
operator with position that given after L.P.  
the operators would not be excluded on basis of  
such giving in closed subsectors from the  
company authority under Sec. 1 of the L.P.  
Act 1976. On the impact of Act 5 of 1976 a  
was no longer permissible for the transport  
authority to permit the private operators to  
ply their stage carriage on the common  
sector, in the case of cases and routes, which  
were nationalised in the complete exclusion  
of private operators. If by reason of the  
unauthorised and unilateral practice which had  
grown up in Uttar Pradesh, private operators  
had been allowed to ply vehicles over common  
sector, despite statutory prohibition, that  
unlawfully nationalised the operators in closed  
authorisations under Sec. 1 of the 1976 Act.

(Para 11)

**Case Related Chronological Facts**  
ALL 1986 SC 349 1985-87 SC 560 1986  
ALL 201 1  
ALL 1984 SC 762 1

**CHENAPPA REDDY, I** — The provisions in these two petitions and special leave petitions filed pursuant to ply stage carriage over various routes in Uttar Pradesh, several of which routes were parts of routes which were nationalized in the 1970s. The respondents' answers made no provision for any private operator along any stage carriage over any part of the nationalized routes. Operation of stage carriages over certain routes was totally excluded. The result was that from the respective dates of nationalization, it was not permissible to permit any private operator to ply a stage carriage on any part of the nationalized route. However, by virtue of sec. 10(1) of Uttar Pradesh Road Transport Services Development Act 12 of 1952, these private operators were allowed to ply their stage carriages on the whole of their routes including the common routes. The Uttar Pradesh Road Transport Services Development Act 1955 was amended by Central Act 56 of 1969. Art 56 of 1969 came into effect from April 1, 1971. Section 76 of Act 56 of 1969 which was inserted into the Motor Vehicles Act 1939 as s 16A read permission or carriages granted as well as stage carriage permits under the repealed enactment or laws they were not inconsistent with the provisions of the Act. The permission granted under sec. 16A of U.P. Act 12 of 1955 was presently inconsistent with the provisions of Chapter IV A of the Motor Vehicles Act 1939 and the permission therefore ceased to be effective from 1-4-1971, the date of repeal of the 1955 Act. Therefore it was no longer permissible for the private operator to ply their vehicles on the common routes from 1-4-1971 onwards. Despite the statutory prohibition against any private operator plying a stage carriage on any part of the nationalized route in the absence of a provision in the scheme of nationalization it appears that a practice grew up (we have borrowed the word *Practice* from one of the judgments of Allahabad High Court which was cited before us) in Uttar Pradesh of permitting private operators to ply their stage carriages over common routes of nationalized routes provided they did not set down or pick up passengers at any point on the common routes. The *Practice* was wholly unconstitutional without any legal sanction

whatsoever. However in 1976 the Uttar Pradesh Legislature enacted the Uttar Pradesh Motor Vehicles Special Provisions Act 1976 to provide for the grant of authorisation to holders of stage carriage permits to ply their stage carriages over common routes. This was provided for art. 5 of the Act. Art. 5 was interpreted by the court in *Hindustan Transport Co v State of Uttar Pradesh* (AIR 1984 SC 101) to mean that the operator seeking an authorisation should hold a permit on the date of authorisation. Section 5(4) of the Act makes the provisions of the Act applicable only in relation to schemes approved or proposed to be approved, and such routes notified or proposed to be notified under Chapter IV A of the Motor Vehicles Act 1939 as amended in its application to Uttar Pradesh thereafter referred to as Principal Act and so permit issued under Principal Act before the commencement of the Act. Being their authorisation 5, 10 of the 1976 Act. Sns 5, 4 Radhak and Shri K. K. Vengappal learned counsel for petitioners urged that the provisions were enacted to obtain authorisations from the competent authorities under 5, 1 of the Act if they had permits to ply stage carriages on the routes having common routes on July 1, 1976 the date of commencement of Act 27 of 1976. They contended that on the basis of the observations of the court in *Hindustan Transport Co v State of U. P.* (AIR 1984 SC 101) impugned their applications for renewal of their authorisations had been wrongly rejected on the ground that they did not possess permits on the date of their authorisation notifications. We do not see any force in the submission of the learned counsel. As pointed out by us on the repeal of Act 5 of 1976 it was no longer permissible for the transport authorities to permit the private operators to ply their stage carriages over the common routes in the case of routes and routes which were nationalized to the complete exclusion of private operators. If by reason of the constitutional and internal project a technical ground upon Uttar Pradesh private operators had been allowed to ply vehicles over common routes despite statutory prohibition that would certainly enable the operators to obtain authorisations under 5, 3 of the 1976 Act. Whether such there might have been





collected Judge to re-examine land of tenant holder after taking into consideration the claim made by him.

**Held:** High Court's remanding case to the District Judge would necessitate appeal against Prescribed Authority's order but one of them has already decided and thus the same had continued to remain pending throughout. Hence any step taken by the Collector for taking possession of tenant holders land which had been declared surplus by Prescribed Authority, while his appeal was so pending before District Judge will be wrong on ground that it had stayed in State Government during pendency of such appeal was completely without jurisdiction. Accordingly, order of Prescribed Authority directing issuance of possession of surplus land declared by its earlier order after re-examining the surplus land in accordance with rules framed by revenue holder and as directed by order of District Judge who dismissed Prescribed Authority's earlier order after obtaining the appeal such subsequent order of Prescribed Authority would be perfectly within its jurisdiction and in order of law. (19)

**Order 5 H (3)** the Collector can have jurisdiction to take possession of surplus land as declared by Prescribed Authority only if he be satisfied by Tenant holder's request that such surplus declared. Any possession taken before this date would be invalid without justification. Again as laid down in S. 14(3) as well as in rule 1 of the land declared as surplus would not in State Government only after possession of surplus land has been validly taken with effect from the date on which appeal preferred under S. 13 was finally decided. The Collector would require jurisdiction to take such surplus land only after property is such surplus land has as provided in S. 14 issued in State Government. (Para 14)

**(C) W.P. Impediment of Calling on Land Holdings Act I of 1941, S. 37 — Declaration of surplus land by prescribed authority — Order not valid in appeal — Prescribed authority has power to direct realisation of possession in accordance with S. 146, C.P.C. of land eventually included in calling case of landholder.**

**Order 5, 37** where order of Prescribed Authority had been varied or reversed on appeal it had the power in accordance with provisions contained in S. 146 C.P.C. to direct the surplus taken for realisation of possession of properties that have already been included in calling case of tenant holder after 1941, under the order, whatever steps had been in the meantime, included from calling case and ordered to be its surplus land. (Para 16)

#### Cases Related Chronological Form

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**W. H. Khan for Petitioner, Standing Counsel, R. B. S. Tarekat for Respondent**

**H. H. SEHR, Aug. C. J. —** Petitioner in this was granted an order of possession of plot of land which originally belonged to one Ghulam Singh. These plots are said to have been taken over by the State of U.P. under S. 34 of U.P. Impediment of Calling on Land Holdings Act, 1941 (hereinafter referred to as the Act). They have been, in pursuance of the order dated 5-11-1981 passed by the Additional Commissioner, Faizal, and the order dated 23-10-1976 and 18-1-1981 passed by the Prescribed Authority Faizal, directed to effect possession of the said plots to the original tenant holder. Being aggrieved the petitioner has approached the Court seeking relief under Art. 226 of the Constitution of India.

**I** Briefly stated the facts giving rise to the present petition are that Ghulam Singh, respondent No. 4, was served with a notice under S. 102(a) of the Act and the Prescribed Authority declared 29 Bighas 15 Khas and belonging to him as surplus. It also indicated the plots that were to constitute the said surplus area. Aggrieved Ghulam Singh went on appeal before the District Judge. During the pendency of the said appeal he made an application dated 10-10-1975 praying that in place of the plots declared by the Prescribed Authority as surplus the plots mentioned by him in the application be included in his surplus area.

However, the District Judge did not consider the prayer made by Gulab Singh in his application dated 12-12-1975 and dismissed the appeal filed by him vide order dated 21-12-1975. Gulab Singh thereafter filed a writ petition before the Court claiming that the order while dismissing the appeal of the District Judge had effected not only, excommunication but also expropriation, as he had, contained in his application dated 12-12-1975. In the meantime when Gulab Singh's appeal was dismissed by the District Judge on 21-12-1975, the Prescribed Authority, sent the respondents regarding surplus and declared by it to the Collector who took an possession on 24-12-1975 and eventually, expropriated by taking away the name of State of U.P. in place of Gulab Singh was made in village papers accordingly. The matter subsequently expropriated as surplus was, referred to the expropriation and clearance were also issued as village records.

3. The writ petition filed by Gulab Singh questioning the validity of the order of the District Judge dated 21-12-1975 dismissing the appeal, was ultimately allowed by the High Court vide judgment dated 1-2-1976. While allowing the writ petition and setting aside the order of the District Judge dated 21-12-1975 the High Court also obtained that it was the duty of the District Judge, in while disposing of the Gulab Singh appeal, examine the claims with regard to the surplus land claimed by him in his application dated 12-12-1975.

4. The District Judge accordingly released Gulab Singh's appeal which was then set against the order of the Prescribed Authority and by his order dated 12-3-1976, he allowed the writ appeal and made the order of the Prescribed Authority was dissolved in relation to Gulab Singh's surplus land after considering the application dated 12-12-1975, filed by him in the appellate Court. He however made it clear that the removal of surplus was declared by the Prescribed Authority was not to be disturbed. When the claims were back to the Prescribed Authority, a rule as order dated 23-10-1976, reprimanded the plea that more to be included after map was made in accordance with the record maintained by him in his application dated 12-12-1975.

5. Gulab Singh thereafter moved on

application dated 11-2-1980 praying, in his order 5-2-1980 the Act praying that settlement of plots made for the Collector in a case of this, permanent be cancelled for the reason that the said plot had been excluded from the area which had been declared as for his surplus land. The said application came up for consideration before the Commissioner, Banda, on 5-10-1980 when Gulab Singh notified that he was not entitled to claim any relief from Commissioner under 5-2-1974 of the Act. He was also advised to work agreement with by moving an application under 5-1-1974 C.P.C. before the Prescribed Authority. He accordingly moved an application praying that he should be permitted to withdraw the application dated 11-2-1980. On the same day, the Commissioner dissolved Gulab Singh's application dated 11-2-1980 with the observation that the applicant could move the Prescribed Authority for interim application proceedings under 5-1-1974 C.P.C.

6. Gulab Singh then moved an application dated 7-2-1981 praying to be set aside under Section 144 C.P.C. before the Prescribed Authority. Banda said and observed that the plots which had been declared as surplus by the Prescribed Authority vide his order dated 25-12-1975 and seized with various reasons held in force have been held by the Prescribed Authority vide its order dated 12-10-1975 as belonging to him. The said plots have been removed from the list of plots declared as surplus and the Commissioner, Banda, Gorakhpur had vide its order dated 25-11-1980 that the action made by the Collector in respect of these plots was illegal. He therefore prayed that the Prescribed Authority should restore possession of those plots to him in accordance with the provision contained in 5-1-1974 C.P.C. The expropriation that that application on 7-2-1981 and considered the proper move by Gulab Singh. According to him, various plots have been illegally seized with them by the Collector. They claimed that the said plots named in the State Government on 24-12-1975 and their possession had also been taken over by it. The Collector was in the circumstances, open minded in setting the plots with them. They further claimed that no order passed in proceedings in which they were not made parties, was binding on them and Commissioner's order dated 1-11-80 nullifying Gulab Singh's application for interim

proceedings under S. 20(1) of the Act did not operate as its pawns. They also mentioned that the application filed by Gurbal Singh for revocation of order S. 144 C.P.C. was not maintainable. The prisoners also moved another application on 14-1981 stating that their objections with regard to maintainability of Gurbal Singh's application under S. 144 C.P.C. should be decided as a preliminary issue. Eventually the Permitted Authority vide its order dated 14-4-1981 rejected the objection of the prisoners and held that the application under S. 144 C.P.C. for maintenance of possession filed by Gurbal Singh was maintainable. It held that the Permitted Authority had on different dates directed different parts of Gurbal Singh as well as the prisoners to remove their photographs from the premises. Last such direction was made on 20-10-1975 whereby the photographs were removed and the photographs had been directed as copies under order dated 20-2-1975 had been included in the holding of Gurbal Singh. In the circumstances the order dated 20-2-1975 became inoperative and as that became necessary to make correction in the village panchayat accordingly. In the result the Permitted Authority directed that a copy of the order be forwarded to the Sub-District Officer, Banda so that he may after recording the necessary facts in favour of the prisoners remove possession of those plots in Gurbal Singh.

7. As already stated the prisoners in this petition have questioned the nature of the order dated 5-12-1980 passed by the Additional Commissioner, Banda. One of the orders dated 22-10-1975 and 18-4-1981 passed by the Permitted Authority. We will proceed to deal with the submissions made by the learned counsel appearing for the prisoners in respect of each of the three impugned orders one after the other.

8. So far as the order dated 22-10-1975 passed by the Permitted Authority is concerned it was made after the case was returned to it by the District Judge with the direction that the Permitted Authority had to redetermine the surplus case of Gurbal Singh after taking into account the choice made by him at the application dated 10-10-1975. This revised order came into effect for the District Judge as a copy of the order passed by the High Court was not yet received by the District Judge. The order passed by the District Judge on 21-10-1975 directing Gurbal Singh to remove his house

was made. The orders of the order of High Court dated 22-10-1975 and that of the District Judge dated 21-10-1975 accordingly, the case in the Permitted Authority for fresh determination of Gurbal Singh surplus case after taking into account the choice exercised by him in his application dated 22-10-1975 has not been presented before us. Learned counsel appearing for the prisoners contended that before considering the question as to whether or not the choice exercised by Gurbal Singh was a bona fide choice it should be decided as a matter of fact whether the Permitted Authority should have or not made the choice made without such facts afforded to them an opportunity to be heard otherwise. According to the prisoners due was the minimum requirement of principles of natural justice.

9. Please enable to accept the submission. It is not disputed that the plots referred to in Gurbal Singh's application dated 22-10-1975 formed part of the holding. Section 12 A of the Act lays down that in determining the surplus land the Permitted Authority has to, as far as possible, accept the choice with regard to the plots that he would like to retain as part of his holding. This section does not contemplate any objection being entertained with regard to the choice of surplus land by a person who may be claiming some interest in the holding of the concerned tenant holder. Merely because a person claims to have after the crucial date acquired some interest in any part of tenant holder's holding it does not mean that such part of the holding has to be excluded or excluded from his interest. Holders taking land with a view to acquirement with person. As a matter of fact the scheme of the Act indicates that the fact that some one claims to have acquired an interest in a portion of tenant holder's holding after the crucial date is a factor which has to be completely ignored in proceedings under the Act. In this case the Permitted Authority is directed to first ascertain interest in the holding of a tenant holder after the crucial date as to the fact of any person of tenant holder claiming any right for being bound in connection with choice under Section 12 A of the Act exercised by the tenant holder. We are accordingly not impressed with the submission that the prisoners were not afforded an opportunity to be heard in determining the surplus land of Gurbal Singh. In doing this we are also considering

support from following circumstances: under a normal ruling of the Court in the case of *Patel*,<sup>11</sup> 1st Adm. District Judge, Santa Rosa A.F.B., 1981.

Moreover, the petitioner is only citizen. He does not suffer from the order passed by the Appellate Authority. In fact, any person could be considered to be aggrieved by the order of the Prosecuted Authority. It was the State.

10. Last but not least, for the petitioner to consider the removal of the order dated 25-10-1978 unlawful, the Prosecuted Authority assigned its, albeit unknown to Gulab Singh, 1st Adm. District Judge, order as an application that it had no other option of the matter. According to the State, the Prosecuted Authority has the right to the matter and it was not bound to accept whatever there had been ordered by Gulab Singh in his application dated 24-10-1978. This according to the learned counsel for the petitioner, violates the order dated 25-10-1978 passed by the Prosecuted Authority.

11. We are unable to find any word in the application as well. Once it is held that the petitioner did not have any locus standi, the matter of the choice exercised by Gulab Singh is void. It follows that the alleged objection cannot be countenanced as their answer. Moreover, the scheme underlying Section 12A of the Act clearly is that the choice exercised by the senior holder or the agent should order as possible be assigned. The failure in the right of which the choice rests by the senior holder, may not be strictly adhered to, can be applied out in the light of justice, but so is contained in that scheme. Admittedly none of such failure which might have impeded the Prosecuted Authority not to accept the choice ordered by Gulab Singh in his application dated 24-10-1978, as persons in the same case. The only circumstance relied upon by the petitioner in the report was the statement as that had acquired some status in a part of Gulab Singh's holding, they might have succeeded in persuading the Prosecuted Authority to exclude the same from Gulab Singh's holding area. This has not been established as one of the factors which has to be taken into consideration under item of the proviso to S. 12A of the Act. In other circumstances, we are not satisfied that the order dated 25-10-1978 within time and error

of law or of jurisdiction. Its impugnation as yet has been made out by ourselves with the final order in support of our jurisdiction under Art. 226 of the Constitution of India.

12. We were proceed to consider the propriety of the order dated 25-10-1980 passed by the Additional Commissioner. His advertisement after the District Judge dismissed the appeal filed by Gulab Singh which was directed against the order of the Prosecuted Authority dated 24-10-1978 (hereinafter "27 Rights 13 Rights") had no impact on 25-10-1978 information was only in the District Judge who took proceedings to take possession of the land or declared in support. Gulab Singh impugned the validity of the order of the District Judge dated 25-10-1978 in his application before the Court. Subsequently, the same person filed in Gulab Singh was allowed and the appellate order passed by the District Judge dated 25-10-1978 was set aside. Gulab Singh thereafter moved as applicant before the Additional Commissioner. He was required to make an application under S. 25A of the Act and in order to the settlement made in favor of the petitioner. However, Gulab Singh realized that the provisions of S. 25A of the Act were not applicable in the facts of the case. He accordingly moved an application dated 5-11-1980 praying that he may be permitted to withdraw the said application. The Additional Commissioner by means of the impugned order dismissed the application filed by Gulab Singh accordingly. While dismissing the application of Gulab Singh he merely stated that Gulab Singh may move an application for possession of the land under S. 14-C P.C. and also remove the statements made by Gulab Singh that the statements obtained by the petitioner had become illegal. While giving the impugned order the Additional Commissioner did not give any direction either on the question as to whether the statements obtained by the petitioner had in the circumstances of the case become illegal or on the question whether any application under S. 14-C P.C. would or not be maintainable. He merely dismissed the application made by Gulab Singh for cancellation of possession that order S. 25A of the Act in the said application was not passed by him. Clearly, in dismissing an application on the ground that the applicant does not prove it does not suffer from any error of law or of jurisdiction. The

order dated 13.11.1975 also does not deserve to be interfered with by this Court in exercise of superintendence under Art. 226 of the Constitution of India.

13. We now come to the last order, namely, the order dated 26-4-1981 of the Prescribed Authority when it recommended a copy thereof be forwarded to the Sub-Divisional Officer to enable him to remove possession of the plot (a) had been declared surplus under the order of the Prescribed Authority dated 25-2-1975 to Gurbh Singh after recording the evidence made in favour of the petitioner. Learned counsel for the petitioner submitted that in the instant case after the appeal against the order of the Prescribed Authority dated 26-2-1975 was dismissed by the District Judge on 21.10.1975 in an order under S. 14 of the Act, he kept open to the Collector to take possession of the surplus land as recommended by the Prescribed Authority. After possession was taken by the Collector, the surplus land was sold down in pursuance of Cl. 2(5) & 2(4) of the Act issued in the State Government and the Collector became fully competent to settle the same with the petitioner. Any claim made by the petitioner after the land declared as surplus vested in the State was of no consequence. It was accordingly, left open to the Prescribed Authority to initiate removal of possession of land to Gurbh Singh after the same had, in pursuance of the proceedings taken under S. 14 of the Act, vested in the State Government. They used to possess that possession by filing up a document of this Court in the case of *Shri Ram Narain Singh v. P. F. 2902 A.P. 13* (24-10-1975).

14. We are not impressed by the alleged submission made by learned counsel for the petitioner. Section 14 of the Act authorises the Collector to take possession of the surplus land declared under Sec. 13 (2) or 13 of the Act and thereafter, after recommendation —

1. In case where the order passed under sub-section (2) of Sec. 13 has been made after the date of vesting of the land;
2. In case where recommendation has been passed under S. 13 after the date of expiry of the period of limitation provided for filing such appeal;
3. In case where an appeal has been preferred under S. 13 after the date of its decision.

The first proviso does not fall in any of the first two categories mentioned above. Under

the third category the Collector could have had jurisdiction to take possession of the surplus land as declared by the Prescribed Authority. A surplus land as order dated 25-2-1975 made after the appeal filed by Gurbh Singh against the order had been declared. Any possession taken before such date would be void without any jurisdiction. Again, as had done in sub-sec. 13 of S. 14 of the Act in such cases, the title in the land declared as surplus would vest only after possession of the surplus land had been validly taken with effect from the date on which the appeal preferred under S. 13 of the Act is finally decided. It goes without saying that the Collector requires satisfaction to settle such surplus land with various persons only after the property in such surplus land has as provided in S. 14 of the Act vested in the State Government.

15. According to learned counsel for the petitioner the person was that the appeal against Prescribed Authority's order dated 25-2-1975 was actually dismissed by the District Judge on 26.10.1975. The Collector could therefore take possession of the land declared as surplus and the sale in the said land would vest in the State Government with effect from 21.10.1975. The land had been vested by the Collector with the petitioner in a sale when the order of the District Judge dated 21.10.1975 stood against. The appellate order of the District Judge was not made by the High Court in pursuance under Art. 226 of the Constitution only on 9-2-1978 long after the plot in question had been validly vested by the Collector with the petitioner, whose possession would according to the petitioner, not stand vacated by any subsequent event.

16. We are unable to accept the submission. When the High Court allowed the writ petition filed by Gurbh Singh on 9-2-1978 and set aside the order of the District Judge dated 26.10.1975 and remanded the case to the District Judge to reinvest the land of Gurbh Singh after taking into consideration the charter submitted by family members of his application dated 19-10-1975. It means that the appeal filed by Gurbh Singh against the Prescribed Authority's order dated 25-2-1975 had not till then been finally decided and that the same had continued in status pending, throughout. Any step taken by the Collector for taking possession of Gurbh Singh's land which had been declared surplus by the order of Prescribed

Authority dated 25-2-1875 while his appeal was pending before the District Judge and in writing the reasons for the ground that what named in the State Government during the pendency of the said appeal was completely without jurisdiction. The action of the Collector could not in any way affect the rights of Chitab Singh according to the clause included in his application dated 25-10-1873. Reference placed by the petitioner on *Smt. Ram Kalyan* case (1980) All LJ 1241 (supra) is in this regard not well founded. In that case the Court observed that:—

There is no common law of this Court as the point that the petitioner can argue to challenge all such orders in law rights stated contravened under 5-14 of the Act. In the instant case from the records it clear that the Provincial Authority held that the alleged dispossession of petitioner on 8-4-1873 was illegal. In this view of the matter it has to be said that there was no question of orders by the petitioner when she moved an application dated 8-4-1873 and therefore there was no good ground for rejecting the paper made in the said application.

These observations in *supra* case issued of supporting the petitioner's contentions to nature there. For in this case it was held that inasmuch as the alleged dispossession of the petitioner by the acting authorities being illegal, petitioner's rights were not extinguished and that it was open to her to maintain her claims even after the alleged dispossession. Applying the principle in the facts of the present case, we find that the alleged dispossession of Chitab Singh in pursuance of the order of the Provincial Authority dated 25-2-1875 as affirmed by the illegal order of the District Judge dated 21-10-1875 cannot be treated as legal and as such liable to the interference in the way of the acting authorities in giving effect to the claims advanced by Chitab Singh in his application dated 20-10-1875 which admittedly was made during the pendency of the appeal against Provincial Authority order dated 25-2-1875. We have already held that the order of the Provincial Authority dated 25-2-1875 whereby it claimed the surplus land of Chitab Singh is declared by its order dated 25-2-1875 was perfectly within its jurisdiction and authority.

[7] Learned counsel for the petitioner then

submitted the case if it be that the Provincial Authority had by its order dated 25-2-1875 which claimed the surplus land adjudged by its order dated 25-2-1875 in fact no jurisdiction to direct possession of land to Chitab Singh amounts to transfer the Act specifically confers upon the Provincial Authority no power to direct restoration the date and such power which is a. He relied upon the following passage according to the Full Bench decision of this Court in the case of *Smt. Agar As Khat v. Haldar*, 1974 All LJ 187 (1974) 177 ALJ 174:—

However, the degree to which two single Judge may exercise the authority in *Smt. Khat* case by District Bench, pointing the power of exercise on basis of inherent jurisdiction to order restoration on the analogy of 5-15) and 5-16) of the Code of Civil Procedure, do not lay down the correct law. The exercise of inherent jurisdiction is the province of a Court of law of general jurisdiction. For every Court is constituted for the purpose of doing justice according to law and must be directed to possess an authority, authority and as inherent in its very constitution. If such powers as may be necessary to do the right and to make the wrong in the course of administration of justice. Even in the case of a Court the exercise power is not unlimited in that if a matter falls within the order of express provisions of the statute, the inherent power of the Court must so that statute, be regulated as prescribed by the Legislature. An authority or Tribunal of limited jurisdiction not being a Court, this has no inherent power unless the statute confers such power on them, and in the case of any such conferral of power the authority or Tribunal can pass only such orders as are provided in the Act under which they are created provide for special authorities and tribunals are constituted under special statute and for special objectives and functions. It is not possible to imply inherent powers in them. To day-day our business in the matter shall be that a power rather an express limit, or by necessary implication and concluded that as the acting authorities are not Courts of law, they do not possess any inherent power to direct restoration of properties.

[8] Learned counsel for the respondents

contracted the admission made on behalf of the petitioner that the U. P. Department of Co-ops or Land Holdings Act 1950 does not specifically confer a power on the Prescribed Authority to take possession of an estate or an order passed by them as subordinate's orders. He invited our attention to Sec. 27 of the Act which runs thus :—

Any person or authority holding an estate or having an objection under this Act, shall as far as it may be applicable, have all powers and privileges of a civil court and follow the procedure laid down in the Code of Civil Procedure, 1908 for the trial and disposal of suits relating to immovable property.

Learned counsel for the petitioner contended that, as power conferred by Sec. 27 of the Act could be exercised only for the purposes of hearing and disposal of objections under the Act. The provisions of the Code of Civil Procedure have not been made applicable at any stage subsequent to the disposal of the objections under the Act. According to him, as the instant case the objection power of respondent is being exercised by the Prescribed Authority at a stage after the disposal of Gurbu Singh had been finally disposed of by the trial court and hence petitioner was to be considered before S. B. Narayag J in the case of *Sita Karandiah v. A.D.J. Bareilly* [1961 A.P. 11552]. In that case the order of the Prescribed Authority withdrawing possession of the land declared by it as surplus was subsequently set aside on appeal; the question for consideration was as to whether it was open to the Prescribed Authority to re-exercise its power conferred by Sec. 27 of the Act after regaining possession. The Court pointed out that under the provisions of Sec. 27 of the Act the Prescribed Authority had been clothed with all the powers and privileges of a civil court and has been required to follow the procedure laid down in the Code of Civil Procedure for the trial and disposal of suits relating to immovable property. The Court posed for itself the question as to whether while considering applications for revocation of possession the occasion for which is the order of the Prescribed Authority itself, could it be said that a mere revocation of holding on inquiry or hearing of an objection under the Act or did it constitute proceedings which did not come within the purview of the Act.

After considering the scheme and the objectives of the Act it proceeded to observe thus :—

The preamble of the Act shows that the purpose of the Act is to provide for the improvement of co-ops on land holdings and the purpose is to serve the interests of the community to secure improved agricultural production to provide food for landless agricultural labourers and for other needy persons as far as to achieve the common good. The determination of the order is not applicable to a tenant holder and of the surplus land with him is required to be made with this purpose in view. When it is found that the tenant holder has no surplus land the proceedings have to be dropped against him and necessary relief has to be given to consequences which flow from that order. Under Sec. 144 C.P.C. injunctions are required to be made when it is a first instance or order is varied or reversed and the Court of first instance shall cause measures to be made. The parties are required to be placed in the position which they would have occupied but for such decree or order or such part thereof as has been varied or reversed.

In the instant case the Prescribed Authority did declare some surplus land over the petitioner. They filed an appeal which was allowed rendering the pendency of the appeal possession was taken and possession was made. Under Sec. 14 of the Act possession of surplus land is to be taken as soon as appeal has been preferred under Sec. 13 after the date of its decree. In other words possession could not have been taken of surplus land during the pendency of the appeal. There are aspects of the matter. Ultimately the Prescribed Authority found that the petitioner had no surplus land and that the order passed by it declaring surplus land was mostly erroneous. As a result of this subsequent order parties were required to be placed in a position which they would have occupied but for the order under its operation therefore restoration of possession is nothing but bringing relief to the parties passed in proceedings under the Act and would be covered by Sec. 27 of the Act and accordingly the Prescribed Authority failed to exercise the jurisdiction vested in it the order passed by it rejecting the application of the petitioner and setting aside partially the appeal is not one liable to be quashed.



As respectfully urged, with the answer in which B. R. Baring, J. has assigned the previous cases of Sec. 37 of the Act and his finding that where the order of a gazetted authority has been voided or reversed in appeal, a law (the power to direct possession in accordance with the provisions contained in Sec. 34-C P.C. attached to the said power) has been specifically conferred upon the Civil Magistrate for the law is necessary for as in his mind the further question as to whether or not the existing institutions could have had an inherent power to direct possession had such a power not been specifically conferred upon them. High the court relied on the order of the order of the Prescribed Authority in disposing the appeal taken for restoration of possession of premises that had been vacated a gazetted order ending area of Ghat Singh that among other the order whereby they had been, in the last instance, excluded from the ending area and declared to be his surplus and

19. Learned counsel for the petitioner must concede that in the instant case the Prescribed Authority has directed cancellation of the settlement that had been made by the Collector in their favour. He relied upon a decision of learned Judge of the Court in the case of *Rayan v. Prescribed Authority C-10* (W.P. No. 1837 of 1982) decided on 22.1.1984 wherein it had been held that settlement of land made by the Collector under the provisions of the Act can be nullified under Sec. 37(1) of the Act only by the Commissioner and the Prescribed Authority has no jurisdiction to cancel the said settlement. It may be that the Prescribed Authority may also have a power under Sec. 37 of the Act to cancel a settlement of land made by the Collector in respect of the premises situated in the Basic Government. The learned Judge in *Rayan* case (supra) however did not pose the question as to why then the Prescribed Authority could remove the persons concerned upon a writ issued by Sec. 34-C P.C. He did not consider the question with regard to applicability of Sec. 37 of the Act. We have already observed above that the proceedings taken by the Collector for taking possession of the land declared surplus by the Prescribed Authority order no. under dated 23.1.1976 are without jurisdiction and are as such null and void. Accordingly, no question of formally setting

aside the possession made by the Collector in favour of the petitioner arises. We have already pointed out that in view of the subsequent order passed by the Prescribed Authority on 23.08.1978 whereby the plot included in Ghat Singh's settlement, Ghat Singh is entitled to restoration of possession over the plot which had earlier been declared to be his surplus. The right cannot stand defeated merely because of a settlement in favour of the petitioner made by the Collector without jurisdiction.

20. In the result we find that the petitioner has failed to make out a case for interfering with the order of the Prescribed Authority dated 23-8-78.

21. In the civil 'control' order for the petitioner contended that the six petitioners were poor landless labourers and they are going to be deprived of possession over the land from which they were earning their livelihood. In response the petitioners could not mention any such apprehension because we find that in all fairness the respondents should now take steps to effect such kind of Ghat Singh to the petitioner which now stands excluded from his ending area.

22. In view of the aforesaid facts it is not necessary to enter upon which ground is advanced. However, we make no order as to costs.

(Signed) Approved

1984 ALL L.J. 407

B. L. YADAV J.

*Ramesh Kumar Mittal, Applicant v. State of U.P. Opposite Party.*

*Complaint filed. Ref. Appellate No. 1444 of 1985 D/ 25.04.1985.*

*Complaint P.C. 2 of 1974 S. 49B - Grant of land - Applicant another intervening before Magistrate and before Sessions Court - His first application cannot be considered.*

In view of the provisions of S. 49B of P.C. Act, the applicant was subconsciously or in other words he surrenders himself before the Sessions Court or before the

RD 100/488/86/1985/1986



contested to show either place of detention started or continued in place to that other place.

5. It is, therefore, clear that custody means confining in prison.

6. *Onkar Nath Agarwal v. State* (1974 Cr. L.J. 2443) (AIR 1974) was a Special Bench case wherein the scope of S. 438 Cr. P.C. 1973 was considered in respect of granting anticipatory bail and the controversy as to whether anticipatory bail application could be entertained by the High Court directly and in that connection it was held that the High Court can entertain applications directly if it does not help the applicant.

7. In *Pratap Singh v. State of U.P.* (1971 AIR Cr. C. 266) (Supra) it was held that the High Court can entertain an application for bail under S. 438 Cr. P.C. (old). I have no quarrel with the proposition laid by the case. But I think that the present case is in respect of different controversy.

8. In *Narayan Singh v. Prakash Kumar Sharma* (AIR 1980 SC 751) (Supra) their Lordships of the Supreme Court were dealing with a case exhibiting different facts and in that case the accused had surrendered before the Sessions Judge. On page 757 (para 11) their Lordships (para 1) held as follows:—

For facts the position is different. The accused were not absconding but had appeared and surrendered before the Sessions Judge.

Similarly in para 5 of the judgment the observation was made as follows:—

the accused surrendered before the Sessions Court and the Sessions Court acquired jurisdiction to consider the bail application.

Hence the alternate case was based on different facts where the accused had surrendered before the Sessions Court. But in the instant case the accused had not surrendered. I am of the opinion that in view of the provisions of S. 438 Cr. P.C. unless the applicant was taken into custody or in other words he surrenders in himself either before the Sessions Court or before the Magistrate, the Court cannot consider the bail application nor he can be released on bail by the Court. It appears that the Legislature had been enough to provide under S. 438(1) a condition

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providing that the accused must be in custody before his bail application can be moved and considered before the High Court. In the applicant, in the instant case, was not in custody. Hence the bail application cannot be considered by the Court.

9. According to the arguments of the learned counsel for the applicant that the bail application can be entertained directly by the High Court, I am of the opinion that as the applicant has not surrendered and he was not in custody, hence there was no question of his bail application being considered and it is unnecessary to go into that controversy.

10. Similarly, as I am of the opinion that unless the applicant surrenders or is taken into custody, he has no right to make the bail application that can be considered. It would be equally futile to consider the bail application of the applicant on merits.

11. I am accordingly of the view that the present bail application is not maintainable in the instant applicant was not in custody. The application is accordingly rejected as not maintainable. It is, however, open to the applicant to pursue remedy provided under the law.

Application rejected.

1984 ALL L.J. 608

(LUCKNOW BENCH)

H & SETH Ag. C.J.

Km. Raj Kumar, Prisoner v. Addl. District Judge VI Lucknow with others, Respondents.

Writ Petn. No. 3074 of 1980 D/- 1.11.1981.

104. U.P. (Temporary) Control of Insect and Disease Act (of 1967), S. 3—(1) Cr. P.C. (1) of 1908, S. 40, Q. 21 R. 1.—Compulsory growth of trees.—It is essential if sanitary growth be contemplated by law that trees have been selected by tenant in compulsory.

When a decree has been passed on the basis of a compromise, the court is not concerned whether the mature growth for evulsion have been planted and what the tenant has selected under compromise. The satisfaction that the sanitary requirements had been

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complied with him to be served on by the opposing court on tender of costs of a particular case, bearing in mind the correct circumstances from the stage of pleading up to the stage when the compromise is effected. Where the pleading and other material on the record indicate a prima facie case about the existence of the statutory grounds for election, a compromise cannot be held to be invalid and thus the opposing court is required to give effect to it. (Para 3)

In the instant case the landlord had admitted the use for recreation of the tennis with the allegation that he had advanced in payment of rent and had also directed landlord's wife. The tenant actually filed a written statement concerning the claim after landlord had eventually entered into a compromise. Under the compromise the tenant admitted the claim of the landlord and agreed to the paying of various debts against him. The question was whether the compromise-debt was enforceable.

Held, the compromise election debt was enforceable. When the tenant agreed to election in the compromise that he admitted the claim of the landlord, when he entered to convey was held to be admitted all the facts which are cause of action to the plaintiff to file the suit for his agreement and for facts admitted in the order that were that the tenant had wrongfully denied the landlord's title to the property and landlord admitted in payment of rent, which are statutory grounds for election. (Para 4-7)

(B) Civil P.C. 154 (1961), O. 21, R. 2(3) — Adjustment of debts — Compromise election debts — Election — This is a case that compromise debts was adjusted on both tenancy has been entered between the parties after passing of compromise debts — Adjustment of debts under O. 21, R. 2(3) as (2) — Election (Court cannot take notice of adjustment — Election of debts cannot be refused on that ground.) U.P. (Temporary) Council of Revenue Elections Act (1947), S. 71. (Para 16)

#### Cases Related Chronological Form

AGE 1978-SC 22	2-7
AGE 1998-SC 1087	11
AGE 1978-SC 101-106	11

H. S. Jha, Jr. Petitioner. Vign. Kanner and P. K. Sethi for Respondents.

**ORDER** — By the petition under Art 26 of the Constitution petitioner K. S. Ray Kanner seeks relief against an order dated 26 of November 1982 passed by the VI Additional District Judge, Lucknow, in Civil Revision No. 286 of 1979.

1. Briefly stated, the facts giving rise to the proceedings are as follows: Defendant No. 2 Kanner was on 26 of November 1970 a Hindu almsgiver that Ray Mohan Das, father of the petitioner, was his tenant in House No. 45, Model House, Lucknow, and that he had defaulted in payment of rent and had also rendered himself liable to eviction as he had denied his title. Defendant Ray Mohan Das filed a written statement and admitted the use of the house on 26 of February 1972 parties entered into a compromise as a result of which the plaintiff's suit was decreed for amount of rent, eviction and damages. The decree also ordered three years' rent to Ray Mohan Das to secure the premises. Where, after the lapse of three years, the decree-holder (Respondent No. 2) put his decree into execution, the petitioner filed petitions under Section 47(1) of the Code of Civil Procedure challenging the decree-holder's right to execute the decree. She claimed that on the date of compromise late Ray Mohan Das was a minor, impotent and had been admitted in the hospital for treatment and that the alleged compromise on the basis of which the decree was passed was null and void. Her further claim was that subsequently the decree-holder had entered into a fresh compromise of tenancy with late Ray Mohan Das by granting amount of rent at an enhanced rate, vide his letter dated 26 of August 1982 and he had thus waived his rights under compromise decree dated 26 of February 1972. Inasmuch as the said decree had been adjusted and stood executed, it could not be executed against the petitioner.

2. The opposing court accepted the objection filed by the petitioner. It observed that the compromise decree was a nullity inasmuch as the statutory grounds for claiming eviction of Ray Mohan Das did not exist. It also held that the conduct of the parties reflected that a fresh agreement of tenancy in favour of judgment debtor Ray Mohan Das had entered into existence and as such the decree was not enforceable.

4. Agreed—will the decree-holder wait up until this relief is given by Judge V.L. Lakshana. The respondent, once again, in the conclusion that prima facie the decree in question was not a nullity, it had been passed in accordance with the provisions of P. Act No. 1 of 1940 and that the respondent might want to refer to discuss the matter for that period. It also held that the court below had not been holding that at a much of the money given by the defendant to Raj Kumar Ashli Das of which of August 1971 is a fresh money as known to the judgment debtor had some other reasons rendering the decree unenforceable. In its result, it held that the decree in question was enforceable and the court below had wrongly refused to discuss as to why not to enforce the same. It accordingly allowed the revision and sent back the file to the executing court with the directions that it should execute the decree in accordance with law. Agreed—Raj Kumar has approached the Court for total under Article 226 of the Constitution.

5. Learned counsel for the petitioner urged upon the depute of the Supreme Court in the case of *Sri. V. Lakshana Lakshmanam*, AIR, 1976 SC 22 and submitted that as one of the judgments of the Court of A. was President the First Criminal and Executive Act, namely 1. P. Act No. 1 of 1940 and subsequently 1. P. (Governing) Regulation of Land Revenue and Executive Act, 1972 of P. Act No. 16 of 1972, which have a land revenue in the nature of a tax or under No. 1 can hardly then the is question of the provisions of 1 from Article 14 has been raised. According to him, a decree for execution of a decree cannot be passed solely on the basis of a compromise between the parties. As in the instant case the decree for execution of the petitioner was not passed on one of the grounds mentioned in section 13 of 1. P. Act No. 1 of 1947 it was invalid and cannot be executed. I am unable to accept the submission. The Supreme Court decision relied upon by the petitioner itself by does not in cases where the decree has been passed on the basis of a compromise the court is to examine whether the reasons grounds for execution have been pleaded and which the court has admitted in the compromise. The judgment that the reasons, grounds for execution have been pleaded and which the court has admitted in the compromise is to be the executing court on finding all facts of a

particular case bearing in mind the result, circumstances from the stage of pleading up to the stage when the compromise is effected. Where the plaintiffs and other material facts are not made out a prima facie case, then the execution of the decree is not to be granted. A compromise cannot be held to be an admitted fact if the reasons court compared to the plaintiff in the instant case, it is not disputed that Raj Kumar Agreed respondents No. 2 had filed the suit for execution of petitioner's decree with the allegation that he had defaulted in payment of rent and had also denied liability to file. Sri. Ashli Das had a written statement concerning the suit. In the written statement he had not denied the title of the plaintiff and he also denied that he was in arrears of rent. Subsequently, however, the parties entered into a compromise paragraph 1 whereof runs thus:—

That the defendant admits the claim of the plaintiff. The suit of the plaintiff be decreed for execution. Amount of interest thereof payable at the rate of Rs. 10/62 per cent.

6. This clearly states that the defendant gave up his claim and agreed to the passing of the decree for his execution. Arrears of rent and damages on the basis of the allegations made in the plaint. These allegations were to the effect that the defendant had wrongfully denied the plaintiff's title to the property and had further defaulted in payment of rent. Subsequently, therefore, grounds were in relation to the plaintiff for filing suit for execution of Sri. Ashli Das, in accordance with the provisions of Section 1 of the 1. P. Act No. 1 of 1940.

7. Learned counsel for the petitioner strongly contended that although it is stated made in the compromise merely indicated that the petitioner had admitted to be claim of the plaintiff which was in the effect that a decree for defendant's execution be made. The allegations should not be considered as implying that he had admitted the fact that he had denied plaintiff's title and had also made default in payment of rent. The submission, in my opinion, has no force. When the defendant agreed to execute in the compromise that he admitted the claim of the plaintiff, what he intended to convey, was that he admitted all the facts which gave rise to the

answer to the plaintiff to file the suit for his payment. In these circumstances viewed in the light of the observations made by the Supreme Court in the case of *Shri. Na. Behu* (AIR 1978 SC 223) (supra) it is clear that the suit decree had been in compliance with the provisions of U.P. Act No. 3 of 1947 and it is not open to the objection that it is not enforceable for the reasons urged by the learned counsel.

8. Learned counsel for the plaintiff next contended that since the decree in question was passed on the basis of the compromise agreed to between the parties on 1st of February, 1972, the decree-holder's persistence in the judgment dated 10th of August, 1972 which ran thus:—

Dear Sir

You are hereby requested to pay rent of Rs. 20/- per month with effect from 15th July 1972 in respect of the premises occupied by you as a tenant thereof in accordance with the provisions of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1947.

9. The judgment debtor thereafter paid rent to the landlord as demanded by him and the landlord also accepted the same. He urged that the decree should stand withdrawn on 1st of August, 1972, the landlord had agreed to accept payment a further six months and had given him a notice in accordance with the provisions contained in U.P. Act No. 33 of 1971 for enforcement of rent of Rs. 1900/— payable to Raj. Vikram Deemed to be son and was not accepted by the landlord, a clearly stated that a fresh contract of tenancy had come into existence and the decree in question stood adjusted and was rendered non enforceable. The fact that the landlord, after the decree was made, willing to accept Raj. Vikram De. as tenant on a basis of the compromise payments made in the compromise which had done, that the landlord would be entitled to receive the amount deposited by Raj. Vikram De. in proceedings under Section 7 C of U.P. Act No. 3 of 1947. The court in paragraph No. 2 as referred to above the declaration was given by him to Raj. Vikram De. mother-in-law and that it was wholly wrong to say that he had accepted my wife as the defendant's son as mentioned in the notice from Raj. Vikram De. The

respondent further contended that in the circumstances of the case, it was not open to the executing court to take notice of this controversy and instead not refuse to enforce the decree and he ground that a fresh contract of tenancy had come into existence before the patta after the decree was passed.

10. It is absolutely clear that the plaintiff's a fresh contract of tenancy having been entered into between the parties is a plea which is substance amount to a plea by the judgment debtor that it was not of the conduct of the parties, the decree is a question stand adjourned and is not enforceable under Rule 2 of Order 21 Rule 2 of the Code of Civil Procedure runs thus:—

(1) Where any money payable under a decree of any kind is paid out of court, or a decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall cause such payment or adjustment to the court where it is to enforce the decree, and the court shall record the same accordingly.

(2) The judgment debtor or any person who has become party to the judgment debtor also may inform the court of such payment or adjustment, and apply to the Court to enter a notice in the decree holder to do so on or a day to be fixed by the court, why such payment or adjustment should not be recorded as satisfied, and if after service of such notice the decree-holder fails to show cause why the payment or adjustment should not be recorded as satisfied, the court shall record the same accordingly.

(3A)

(3) A payment or adjustment which has not been certified or recorded as satisfied shall not be recognised by any court enforcing the decree.

11. In the instant case it is not disputed that none of the parties took any step to, at a result of the reference, conduct of the parties as discussed on adjourned the decree was question adjourned under the provisions of Order 21, subrule (1) or subrule (2). In the result, as provided by rule 2 of Order 21 Rule 2 the alleged adjustment entered in book, place cannot be taken notice of by the executing court and the execution of the decree is question may be refused on this ground.



inspected. The Court on 16 October 1964 passed an order which reads as under:—

Learned counsel has by agreement put in a list available at the station. In view of the order dated 12.12.1963 it is ordered that the appointments of each of the candidates listed by the list in accordance with order and the category which the order appear therein.

The Regional Manager lost in making appointments in pursuance of the order of the court. Another miscellaneous application was filed in the Court on which following order was passed:—

Read learned counsel that are making appointments in view of order for withdrawal of candidature in the name and in the order clear names appear indicated. When over the proceedings for the persons in question an application under the Comptroller of Courts Act is made, which stands as it is considered expedient, but the order in question does not require any clarification. The earlier order dated 12.12.1963 and 7.10.64 are clear enough in terms.

The application is accordingly refused.

3. It was at this stage that the protest proceedings under Comptroller of Courts Act were initiated under Article 217 of the Constitution. The Court on 16 October 1964 in its plead in short narrative Prithvi Narain Agarwal Regional Manager, Gorakhpur and Mr. K. Lalit Kumar Regional Manager, Kaimosi in their case referred to the order in question and there under the Comptroller of Courts Act.

4. On receipt of the notice issued under Article 217 from Mr. K. Lalit Kumar and Mr. Prithvi Narain

5. It had been more stated in the written affidavits that in pursuance of order dated 12.12.1963 names of Working Private Candidates were sent to various depots namely, Sahaspur, Faizabad, Baharpur and Gorakhpur. The names of candidates mentioned from serial Nos. 1 to 30 in the writing, list were sent to Sahaspur Depot, names of candidates from serial Nos. 31 to 100 were sent to Faizabad Depot, names of candidates from serial Nos. 101 to 140 were sent to Baharpur Depot and names of candidates from serial Nos. 141 to 180 were sent to Gorakhpur Depot. It has further been stated that vide letter dated 24.7.1964 there

was further address to the list and the candidates from serial Nos. 181 to 200 were attached to Faizabad Depot, candidates from serial Nos. 201 to 210 were attached to Gorakhpur Depot, candidates from serial Nos. 211 to 240 were attached to Sahaspur Depot and candidates from serial Nos. 241 to 260 were attached to Baharpur Depot. It has been stated that the appointments of candidates had been made in pursuance of the order in 1964. It has further been stated that the writing list had been prepared before and at the time protest was challenged made on this score. It has been stated that appointments were made made in accordance with the panel of working conductors which has been prepared before and at the time of the order of the Court and of the Court. It has also been stated that there was neither any objection to the order of the Court nor of the Court. It has also been stated that the respondents in question have been ordered and the appointments made in pursuance of the order in which the names appeared in the list which has been made in accordance with the order of the Hon'ble High Court in para 3 it has been stated that the respondents made in para 3 above which is correct, has been made in pursuance of the order of the Court. The manner in which the appointments have been made is contrary to the order of the Court and the same has not been corrected or pointed out in the fact that the same was pointed out to the opposite party. The names of the persons were not given in the paragraph under reply and it has also been stated that the persons persons have not been given appointments and have not been pointed out by the applicant in their application.

6. I have heard the learned counsel for the parties at length and given through the evidence and cross-examination made by the respective parties in their affidavits. Learned counsel for the respondents vehemently argued that order passed by the Court was in clear terms and a contemplated that appointments should be made in accordance with the panel of candidates put in at the time. It appears that at no stage it was suggested that the respondents have candidates named in various depots in the region. Learned counsel for the respondents on the other hand argued



that according to the numerous returned lists, respondent candidates belonging to various social categories, were allocated to go to court for further dates in the matter of appointments. Learned counsel for the petitioner further pointed out that out of 349 petitioners, almost all have been accommodated except one or two persons. Learned counsel for the opposite parties stated that in fact the cause for grievance has disappeared in view of such a large number of petitioners having been absorbed. I have given my anxious consideration to various aspects involved in the case. It is no doubt, true that the order of the Court was to the effect that appointments should be made in accordance with the status appearing in the talent list. The order was clarified by order dated 7-10-1983 that the appointments if made from the talent list they shall be made in accordance with the merit and the order in which the names appear therein. It is therefore clear that the appointments made by the opposite parties in the matter should have been made according to the status mentioned usually in the talent list. The respondents adopted a peculiar method by introducing the names appearing in various social categories various experts in the region. However, it is not the contention of the opposite parties that they have been made in accordance with the merit and the order in which the names appear therein. I have no hesitation in observing that the method adopted by the Regional Manager and the Assistant Regional Manager was totally unwarranted. I have no hesitation in also recording a finding that this information of various candidates furnished to respondent was incompetently given to the Court on 10 October, 1983. Such a course of action ought to have been checked by the Chairman and the General Manager of the U.P. State Road Transport Corporation. The Regional Manager is subordinate to the General Manager and Chairman and, therefore, once the Chairman and the General Manager were

party to the writ petition they should have ensured that the reports were given to the court passed by the Court. It shows on my doubt in the mind of these officers it was unnecessary to them to have approached the Court to get the order executed, modified or varied. I have gone through the report of the writ petition and there are some able noted a single application on behalf of the respondents seeking clarification. The conduct of these officers amounts of incompetence and negligence. The Court does not pass orders in vacuo but the orders are passed in response to the pleadings of various petitioners who approach the court for orders. In the circumstances it is with utmost equity that the respondents have acted in accordance with the order passed by the Court. I have no hesitation in holding that they acted in accordance with the order passed by the Court. The orders of the respondents were passed by the Regional Manager and that act on his own initiative. I would, therefore, not be proper for the Court to do so pending appeal by the senior officers viz. the Chairman and the General Manager or the Deputy General Manager. The Regional Manager is therefore guilty of wilful disobedience. Undoubtedly the actions of the whole matter is not before the Court as learned counsel for the respondents pointed out that orders were passed by the predecessor of Sri M. K. Salunkhe in 1980 in appeals filed before dated 2-8-80 and 10-7-80. The Assistant Regional Manager has only conveyed the order passed by the Regional Manager. Technically speaking, according to the officers before the Court can be held responsible. However, the conduct of predecessor of Sri M. K. Salunkhe who did no intervention. I would have started proceedings of contempt against him but unfortunately, after a lapse of so many years in rule of section 20 of the Compendium of Courts Act it is not appropriate to start any proceedings for contempt. It is, however, suggested that the Chairman and the General Manager of the U.P. State Road Transport Corporation will take suitable action against the wrong officers after looking up the 1980 and thereafter.

4. The petition is accordingly **granted**.

technical grounds fails and is accordingly dismissed. Notices issued for recovery are accordingly discharged.

(Per curiam dismissed.)

# 1964 AIR 1, 7 446

B. N. SETH, Ag. C. J. AND  
N. N. MEHTAL, J.

**Bardha Singh, Registrar v. Das, Registrar Co-operative Societies, Madras and others, Respondents.**

Civil Misc. Writ Pet. No. 2003 of 1955 D/- 7-1-1956.

[A] U.P. Co-operative Societies Act (11 of 1944), S. 35-A — Recovery of unpaid dues — Loans advanced by society and its members under S. 35-A — Amount alleged to have been disbursed by official society cannot be recovered under the section.

(Para 4)

[B] U.P. Co-operative Societies Act (11 of 1944), S. 35-A (2) — Issue of recovery certificate under — Opportunity to place his version before Registrar to be given in default — Failure of Registrar to afford such opportunity — Principles of natural justice violated — Recovery proceedings resumed by U.P.E.A. and L.R. Rules (1955), R. 126 — (a) Constitution of India, Art. 226.]

It is said that under sub-rule (2) of S. 35-A the Registrar has to, after an application has been made to him for recovery of amounts of loans advanced by the society, empowered to issue a recovery certificate and in his discretion hold such enquiry into the claim made by the society as he thinks fit. The provision, however, does not state that while issuing recovery certificate the Registrar has got to go by or be guided by principles of natural justice. And when an application is made to the Registrar to recover any balance or arrears of loan from any debtor, the Registrar has to, in accordance with the principles of natural justice, inform the debtor concerned about the claim made by the Society so that the debtor may approach voluntarily him for the amount sought to be recovered from him in strict accordance with the law. It is after the debtor has done

so that the arbitrations under Article 19(1)(g) depending upon the circumstances of the case to hold such enquiry in the matter as he thinks fit and proper. Issue of recovery certificate without complying with the provision has the effect of vitiating the entire recovery proceedings including notice issued by the Registrar under R. 126 of L. R. Rules and L.R. Rules (1955). (Para 5)

D. F. S. Chakrabarti for Petitioner Standing Counsel for Respondents.

B. N. SETH, Ag. C. J. — Petitioner Bardha Singh was served with a notice dt. 27-7-1955 issued by the Registrar under R. 126 of the U.P.E.A. and L.R. Rules (Amendment) to the first petition asking him to file a statement of Rs. 25,000 ROP plus interest plus costs and also to show and justify the said amount before him on 24-7-1955. The notice further mentioned that in case the petitioner did not appear as directed, recovery orders for his arrest and for attachment and seizure of his properties would be issued. Aggrieved, the petitioner has approached this Court for relief under Art. 226 of the Constitution.

2. Petitioner claims to be the Cashier of a Co-operative Society known as Sahakar Sahas Ltd. High Chitani District Madras. (Respondent referred to as the Society). In its name, he, and Suresh is a member of the Zila Sahakar Bank Ltd. (Respondent referred to as the Bank). Primary object of the Society was to advance loans to its members. In due course the Society started forward its loan applications of its members to the Bank and the Bank, after scrutinising and approving the same, used to transfer the amount applied for to the current account of the Society. The Society thereafter paid the amounts to the concerned members by means of cheques. The petitioner claims that he never took any loan from the Society or from the Bank. However, the Assistant Development Officer, Co-operative Societies was prejudiced against him. He accordingly lodged a first information report on 26-11-1955 at Police Station Sahasabad alleging that the petitioner and the Chairman of the Society had misappropriated the funds of the Society. Thereafter, Secretary (a) to Bank, also made a reference under S. 192(1) of the U.P. Agricultural Credit Act, 1953 to the Police for

Societies' Committee, claiming a sum of Rs. 25,000<sup>1</sup> from the petitioner. Additional Registrar/Cooperative Co-operations Committee writing under B. 170 of the Order made up under dated 8.1.1971 approving the Deputy Registrar Societies, Agra Region as Authority for deciding the said dispute. While the said settlement suit was pending and before any award could be made District Assistant Registrar, Cooperative Societies, Mathura, in collusion with the Secretary of the Bank, wrote to the Collector enquiring about recovery of Rs. 25,000<sup>1</sup> from the respondents. In pursuance of the said request, the Collector issued the impugned notices on 17.7.1971. The petitioner claimed that in the circumstances neither any Bank loan nor any other opportunities were closed for recovery from the petitioner unless and until the Deputy Registrar Societies, Agra Region, who had been appointed in or as an Authority for reaching the dispute, has given its award.

3. Sri Mohanram Sharma, Additional District Co-operations Officer, Mathura, has filed a counter affidavit on behalf of the respondents. According to him petitioner Bhoofa Singh had obtained loans from the State and on 20.6.1971 a sum of Rs. 1,050<sup>1</sup> towards principal amount of short term loan and Rs. 2,500<sup>1</sup> towards principal amount of mid term loan were due against him. Besides this Bhoofa Chandra of the State had recovered loans from 15 members of the State on 20.6.1971 and had kept the cash balance amounting to Rs. 15,000<sup>1</sup> with him. He neither deposited the said cash with the Bank nor did he transfer it to the State. In due course proceedings under S. 91-A of the U.P. Co-operative Societies Act, 1963 were initiated against the petitioner because no recovery was found as his name defaulted. The respondents further claimed that it was not necessary for them to have obtained an award before issuing proceedings under S. 91-A of the Co-operative Societies Act. The respondents themselves claim that there is nothing illegal in the recovery sought to be effected by the Collector and claim that the petitioner is not entitled to the relief claimed by him.

4. S. 91-A of the Co-operative Societies Act runs thus:—

91-A. Special provision for recovery of loans made of agricultural society:— (a) The

Registrar may on application made in the Society referred to in S. 24 or an agricultural credit society for the recovery of amounts of any loan advanced by it or any subcommittee thereof issue, member notice as following a statement of accounts on request of such loan and after making such enquiries, if any, as he thinks fit, issue a certificate for the recovery of the amount due.

(2) A certificate issued by the Registrar under subsec. (1) shall be final and conclusive proof of the dues which shall be recoverable as debts of such society.

In the first paragraph can be read re-provision of S. 91-A of the Co-operative Societies Act only for recovery of amounts of any loan advanced by a Co-operative society. Reasons for order for effecting recovery of loans advanced to him have been furnished by an official of the State. From the figures appearing in Income statement the sum of Rs. 25,000-000<sup>1</sup> sought to be recovered from the petitioner is made up partly by the alleged amounts of short term and mid term loans of Rs. 1,050<sup>1</sup> and Rs. 2,500<sup>1</sup> together with the interest due thereon as also by the sum of Rs. 15,000<sup>1</sup>. The amount said to have been recovered by him, together with interest on that amount, however, of that portion of the amount mentioned in the impugned recovery certificate which represents the sum of Rs. 15,000<sup>1</sup> which did not pertain to the nature of a loan advanced by the State, plaintiff claims cannot be sustained.

5. So far as remaining amount is concerned it is clear that under subsec. (2) of S. 91-A the Registrar has been given an application has been made to him for recovery of amounts of loan advanced by the society empowered to issue recovery certificate said to be his debtors. Both such requirements the claim made by the society as for debts to it. The provision however does not mean that while issuing recovery certificate the Registrar can give a go-by to the principles of natural justice. And what an application is made to the Registrar to recover any balance or arrears of loans from any debtor the Registrar has to in accordance with the principles of natural justice afford the debtor an opportunity to be heard and to state the defence may approach and satisfy him that the amount sought to be recovered



app. 4 which was pending before the learned 174 Add'l District Judge Lockman. During pendency of the appeal an application for continuance of the motion was made by the appellant herein. Another similar application was made to extend the status before appeal. These applications are Annexure 4. Objections were filed on behalf of the Lockman respondents to challenge the proposed continuance. The learned Add'l District Judge by his order dated 9-9-1982 (Annexure No. 5) rejected the respondents' applications on the ground that they were moved with mala fide intentions to delay the proceedings and it appeared would have the effect of nullifying the submissions already made by the status at or as this instance. It is against the order that the present petition under Article 226 of the Constitution has been filed praying for a writ in the nature of certiorari quashing the aforesaid order dated 30-9-1982 and directing the learned Add'l District Judge to allow the respondents to pray for the application Annexure No. 4.

3. The main contention of the petition was that the premises requested had been let out to late S/o S. N. Bhargava who let them out as barber's salon etc. and consequently they were necessary premises in the students' proceedings. This legal plea was said to have been vitiated by such errors and lack of proper advice from the learned although relevant facts were said to have been pleaded in the written statement. Another contention raised was that Bellevue Commercial College was not a legal entity and could not be treated with and could be given the status of a school. Some documents were also said to have been wrongly relied upon by the learned. Additional District Judge while rejecting the respondents' applications.

4. It has not been denied that the appellants No. 1 in the Lockman and he had made an application under Section 33 of U.P. Act No. 321 of 1971 against the school M/s. Bellevue Commercial College. The application is Annexure No. 1 and clearly indicates that it was made against M/s. Bellevue Commercial College. Annexure Lockman through response by Pather had Bhargava. A other Annexure was made in the application to the effect that the appellants party was a trust in its 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> 7<sup>th</sup> 8<sup>th</sup> 9<sup>th</sup> 10<sup>th</sup> 11<sup>th</sup> 12<sup>th</sup> 13<sup>th</sup> 14<sup>th</sup> 15<sup>th</sup> 16<sup>th</sup> 17<sup>th</sup> 18<sup>th</sup> 19<sup>th</sup> 20<sup>th</sup> 21<sup>st</sup> 22<sup>nd</sup> 23<sup>rd</sup> 24<sup>th</sup> 25<sup>th</sup> 26<sup>th</sup> 27<sup>th</sup> 28<sup>th</sup> 29<sup>th</sup> 30<sup>th</sup> 31<sup>st</sup> 32<sup>nd</sup> 33<sup>rd</sup> 34<sup>th</sup> 35<sup>th</sup> 36<sup>th</sup> 37<sup>th</sup> 38<sup>th</sup> 39<sup>th</sup> 40<sup>th</sup> 41<sup>st</sup> 42<sup>nd</sup> 43<sup>rd</sup> 44<sup>th</sup> 45<sup>th</sup> 46<sup>th</sup> 47<sup>th</sup> 48<sup>th</sup> 49<sup>th</sup> 50<sup>th</sup> 51<sup>st</sup> 52<sup>nd</sup> 53<sup>rd</sup> 54<sup>th</sup> 55<sup>th</sup> 56<sup>th</sup> 57<sup>th</sup> 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recipients were among similar other firms, school-students at faculty. It is also apparent that no plea whatsoever was taken in the written statement under effect that there were no other persons concerned in the college or in the premises who were intimately parties to these proceedings. For the first time during the pendency, after appeal was sought to be raised that other firms of late S. N. Bhatnagar were necessary parties and in their absence the application was not maintainable.

It is common to be learned counsel has laid emphasis on the position under Mrs. Balasa Commercial College could have the status of a tenant in the eyes of law and could be forced to vacate and consequently all the facts of late S. N. Bhatnagar should have been explained in full before the court in the application and in the written statement submitted to the court that there is very important defendant no. 2, Mrs. Balasa Commercial College was the tenant and this fact had not been denied except making an assertion that the original landlord had let on the premises to late S. N. Bhatnagar 10 years back. The fact however remains clear even though the contract of tenancy might have taken place with late S. N. Bhatnagar yet it was clearly for Mrs. Balasa Commercial College. The purpose of the case was removal of the going school under the old name and sale of Balasa Commercial College. None of the other two features of P. N. Bhatnagar's case turned to be made parties to the proceedings before the Prescribed Authority and accordingly in the light of the statements made in the written statement they had no concern with the premises in dispute or the College as they were raising their separate statement in other capacities in the city. It has not been denied that the rent was paid with name of Mrs. Balasa Commercial College and relevant documents had been made in the payment statement for 31. Learned counsel in his submission conceded that notes should not have been taken of rent in rent receipts ought to be filed by the landlord for the judgment does not mention that any rent receipts have or records had been looked into. While his facts mentioned in that the objection filed before the learned Prescribed Authority vide paper No. C. W.

10, P. N. Bhatnagar clearly contained an admission that he was running a going school under the name and style of Balasa Commercial College and that the other two features were namely, rights, schools as Prescribed Authority's question of Bhatnagar facts were all before 2 and had been through objection contained in paper No. C. W. 10 which was made before the appellate court in connection with the appeal against the order of the Prescribed Authority. In para 2 of the said objection P. N. Bhatnagar was said to have stated that the landlord had been occupying rent from him with the knowledge that he alone was carrying on business in his own right in the disputed premises. It has not been denied by the petitioner that these objections were contained in his objection paper No. C. W.

Learned counsel for the petitioner has placed reliance on a Division Bench decision of the Court in *Ramesh Chandra v. Gopabandhu Prasad Sharma*, AIR 1977 All. 38 and on it enough stress was made that the facts of late S. N. Bhatnagar become tenants in common and should have been explained. The facts, the case were clearly different as the name was being used in his personal capacity and not as a Firm as in the instant case Balasa Commercial College appeared to be a partnership firm without being under the Firm name. The fact was clearly mentioned in the application for proposed amendment. A reference to Order XXX Rule 10 C.P.C. will indicate that a person carrying on business as a name or style other than his own name may be sued in such name as style as if it were a Firm name. That being so P. N. Bhatnagar would be sued in the name and style of Mrs. Balasa Commercial College. It will be noted according to the written statement who was trying and running the institution and neither he had concern with the accounts being run by his brother nor they were said to be in any manner concerned in the institution being run by him in the premises in dispute. The other statement made in the written statement will stand out. A reference to B. 4 of Order XXX C.P.C. will also indicate that if late S. N. Bhatnagar was running Balasa Commercial College in the premises and now Mrs. P. N. Bhatnagar was running the same, it was not necessary to bring on record the facts of late

§ 5. Bhagwati and the proceedings could be continued in the name of M/s. Balana Commercial College. A similar matter came up for consideration before Patna High Court in *Patna High-Court Tahsildar Kamari v. Sarsara Kamari AIR 1974 Pat 197*. It was held that the person concerned could be used in the same manner as any other party name could if it was a proprietary concern which individual and at the instant time it was not necessary to continue through whom the said firm or concern was being run. Appellate description was rather redundant.

8. That the endorsement simply was not only lightly believed but clearly mala fide is apparent from the fact that the proceedings had terminated in 1973 but only five years later the plea is accepted to demand such lot too during the pendency of an appeal. That the endorsement was not moved from file is also clear from the fact that other payments have been made in the written statements to the effect that it was P. N. Bhagwati alone who was concerned with Balana Commercial College and that his other two brothers had nothing to do with it nor had anything to do with other two typing schools being run by his brothers. The purpose of the money-order by endorsement and it is obvious that the payments in dispute were taken for running a typing school in the name of Balana Commercial College. To take the plea of non-judice at such a late stage and then use it as the basis for the endorsement made in the written statements denying concern of others with these payments in the money-order clearly amounted by a device to joining the proceedings in these technical grounds which even on merits had no substance. The learned Addl. District Judge was therefore justified in imposing the expenses on the respondent. Learned Counsel for the opposite party No. 2 (plaintiff) has relied upon *Shari v. Sultan Khan AIR 1970 Pat 197* and thus 281 supporters of the contention that an endorsement of the value of a deposit should convert the debt into a totally different and consecutive type of plea. Although the facts in that case were different but in principle it cannot be denied that permitting the proposed amendment would wipe out the effect of admission made by the bank in the written statements, and would unnecessarily bring on second parties, who according to the own showing of the bank

are parties having no commercial relation merely on the previous question before court of the matter the endorsement was rightly rejected and the process is without merit.

9. The petition is accordingly dismissed with costs to the opposite party. No. 2.

(From-endorsement)

PER JUDGE, S. P. GUPTA

— AIR 1976-Supreme Court 444

(From Affidavit)

S. S. VENKATARAMAN AND M. P. THIRUKAR JJ.

Civil Appeal Nos. 508-51 of 1976. Cr. 147/1976.

State Bank of India, Appellants v. M/s. Salsara Sugar Mills Ltd. and others Respondents.

Sugar Undertaking (Taking Over of Management) Act 149 of 1974, § 7 — Notification under — General facilities due to Bank created by notification while suspending all facilities under contract to which notified undertaking was party — Suit against notified sugar undertaking and guarantors filed by Bank for recovery of amount due — Suit would remain unaffected by notification. Judgment of Additional High Court reversed. (Contract Act (3 of 1872), § 128).

Where the notification issued by Central Government under § 7(1)(a) read with sub-§ 1(b) although declared that the operation of all obligations and liabilities arising out of all contracts etc. to which the notified sugar undertaking was party, would remain suspended for certain period but it excluded attached liabilities due to a Bank or Financial institution from its operation, action filed by a Bank against a notified sugar mill and its guarantors for recovery of amount due from the mill would remain unaffected by the notification. Moreover even when a notification is issued under § 7(1)(a) suspending the operation of any agreement or assurance of property to which a notified sugar undertaking or the person issuing was party, any proceeding against the guarantor would remain unaffected by the issuance of

such a sentence. Judgment of Admitted High Court Reversed AIR 1960 SC 297 Rat 10. (Para 9 to 12)

**Cases Referred Characterised From**  
AIR 1960 SC 297 (1960) 1 SCR 428 7

Dr Y S Chaudhry is Advocate with Mr S A. Choudhry Advocate with him for Appellants. Mr Yogendra Prasad is Advocate with Mr S. R. Senanayake Advocate with him for Respondents.

**VENKA TARAMANILAI** — These appeals by special leave are filed against the order dated May 25, 1964 passed by the High Court of Adalatul Muzilam for C.O. No. 126 of 1962 and the order dated February 22, 1965 in C.O. No. 144 of 1964 under the title of this Court.

3. The appellant, the State Bank of India had allowed cash credit facility to M/s. Salween Sugar Mills Ltd. (respondent No. 1 herein) on the security of the goods produced at the sugar factory belonging to respondent No. 1. Respondent No. 1 had thus deposited in the Banking office of the State Bank of India on February 5, 1962 by way of equitable mortgage the title deeds of an immovable property to secure the advance advanced under the cash credit facility. Respondents Nos. 2 to 5 M/s. Gov. and Bala and Brothers, M/s. S. G. Salween, S.M. G. L. Nandani and P. K. Salween had applied for the permission for the repayment of any amount due from respondent No. 1 under the cash credit account. Since there was default in repayment of the amount due under the cash credit account the State Bank of India obtained a writ in May No. 18 of 1960 on the file of the Additional Deputy Judge, Coimbatore for recovery of a sum of Rs. 24,39,123.95 as per Mys. No. 1708 against respondent No. 1 in 5 who were described in Defendants Nos. 1 to 5 in the plaint praying for a decree in terms of O. 24 R. 4 C.P.C. and further consequential decrees. In the grounds filed by writ-off an order made by the Central Government under the Sugarcane Undertakings (Taking Over of Management) Act, 1974 (Act No. 49 of 1974) (hereinafter referred to as the Act) the sugar undertaking belonging to respondent No. 1 had been taken over by the Central Government and/or Bagmati Bagmati been

operated as the Chairman of the said undertaking. The State Bank of India therefore impounded Bagmati Bagmati Union of India since Defendants Nos. 5 and 7 in the writ. In the writ respondents Nos. 1 to 5 pleaded inter alia that the trial Court had no territorial jurisdiction in or, the writ and the decree was not maintainable and as such the writ was liable to be stayed in view of the provisions of the Act. The trial Court had issued two orders staying out of the above plea. The defendants filed an application before the trial Court on September 1, 1962 requesting it to decide first the above two issues relating to its jurisdiction and its competence to proceed with the writ. After hearing the parties the trial court found that a writ jurisdiction to try the writ in the proper form is security were assessed under a jurisdiction with which it was incompetent to proceed with the writ since the finding of fact that the management of the writ of respondent No. 1 had been taken over by the Central Government under the Act. Aggravated by the writ decree of the trial court respondent No. 1 filed a revision petition in Civil Revision No. 126 of 1962 before the High Court of Adalatul Muzilam. The High Court allowed the revision petition holding that the trial of writ in order to make No. 1 namely the prayer for decree for Rs. 24,39,123.95 against respondent No. 1 in 5 was competent was liable to be stayed by virtue of the provisions of the Act. The High Court however decreed that the writ be not such as to nullify other matters may proceed. Since the only relief prayed in the writ was in respect of the recovery of Rs. 24,39,123.95 from respondent No. 1 in 5 a writ of certiorari under the provisions of O. 24 R. 4 C.P.C. and that had been stayed, the State Bank of India applied to the High Court by filing an application No. C. 10 A, 649(M) of 1964 for clarification as to what other matter could be tried in the writ. This application was rejected by the High Court in its order dated February 22, 1965 holding that the provisions of O. 24 R. 4 C.P.C. were quasi final and a writ for the writ below is proceed in accordance with law. The High Court was of opinion that the writ needed no further clarification. Aggravated by the orders passed on revision in Civil Revision No. 126 of 1962 and the order passed in C. 10 A. No. 649(M) of 1964 the State Bank of India has filed the appeal by special leave.





5. A reading of clause (b) of sub-section (1) and sub-section (4) of S. 7 of the Act makes it clear that it is only on the occurrence of a contingency to the Central Govt. under S. 7(1)(b) constituting the necessary declaration that the operation of all or any of the contracts etc. entered into by the notified sugar undertakings which are referred to in the said notification shall remain suspended or that all or any rights, privileges, obligations and liabilities accruing or arising thereon before the said date shall remain suspended. The Act does not provide that such sugar undertaking being notified, automatically all the contractual undertakings of property or agreements entered into by such sugar undertaking would become inoperative. It states that only those contracts, undertakings of property or agreements etc. which are specified in the notification issued under S. 7(b)(i) and all contractual would become suspended and the rights, privileges, obligations and liabilities arising under them would not be enforceable. In the instant case the Central Government first issued notification, then came to issue specifying the contracts, undertakings of property agreements etc. the operation of which would remain suspended or ceased during the period of its management of the said undertaking in question. The issue therefore arose in that connection in dated March 21, 1964. It reads thus:

S. 5. BE IT ENOWNED that the Central Government notified the undertakings the Salween Sugar Mills Limited manufacturing sugar at Bhekone in the district of Gondal in the State of Uttar Pradesh being the notified sugar undertaking, it is necessary to do so in the interests of the present public with a view to protecting the full or the value of production of the sugar industry.

Now, ordinarily in course of the process contained in clause (b) of sub-section (1) and sub-section (4) of section 7 of the Sugar Undertakings (Taking Over of Management) Act, 1970 (41 of 1970) and in compliance of the instructions of the Government of India to the Ministry of Food and Civil Supplies (Department of Food) No. 810-19611 dated the 2nd March 1960, the Central Government hereby declares that the operation of all obligations and liabilities accruing or arising out of all contracts, undertakings of property agreements, undertakings, awards relating

order or other instruments in force immediately before the 26th March, 1960 (other than those relating to contractual obligations to banks and financial institutions) referred to in the said sugar undertaking or the person owning the said sugar undertaking is a party or which was or is applicable to the said sugar undertaking or that person shall remain suspended for a further period from 26th March, 1964 to 12.3.1965.

6. The above notification clearly states that the contracts, undertakings of property etc. the operation thereof is suspended or stayed. The Central Government has made a declaration by that notification to the effect that the operation of all obligations and liabilities accruing arising out of all contracts, undertakings of property agreements, undertakings, awards relating order or other instruments in force immediately before the 26th March 1960 (other than those relating to secured liabilities to banks and financial institutions) to which the said sugar undertaking of the person owning the said sugar undertaking is a party shall remain suspended up to March 12, 1965. It is a very clearly stated in the said notification that it does not apply to secured liabilities due to banks and financial institutions. The liability involved in the case was a secured liability and the creditor is the State Bank of India. Yet the High Court apparently has proceeded to hold that the operation of the contract, undertakings of property and agreements in respect of the undertaking and its property entered into with the State Bank of India is to be suspended and the same in respect of them should be stayed in view of the Act and the notification dated thereafter.

7. It is unfortunate that the High Court used a misleading word *affirmation* those relating to secured liabilities to banks and financial institutions referred to in the notification which had the effect of excluding the mortgage in favour of the State Bank of India from the scope of the said declaration under S. 7 of the Act. The High Court further erred in not noticing the view which is confirmed as stated under S. 7(b)(i) of the Act regarding the operation of any agreements or undertakings of property by which a notified sugar undertaking or the person owning it is party may proceeding against the government.

would remain unaffected by the success or failure of the election. Under S. 82B of the Indian Contract Act, 1872, when as provided in the contract, the liability of the surety is co-extensive with that of the principal debtor, the surety then becomes liable to pay the whole amount. That liability was absolute and it was not deferred until the order pronounced by members against the principal debtor. The Act does not say that when a suretyship is issued under S. 81(b) of the Act, the remedy against the guarantors also is suspended. In any event the order of the High Court against respondents Nos. 1 to 3 is untenable. See *Bank of India Ltd. v. Devender Prasad* (1985) 1 SCR 429; 148 FMR 302 (27).

5. None of the parties raise all relevant submissions and facts and a finalised verdict can be reached only after the completion of the evidence. The subsequent respondents Nos. 1 to 3 as well as respondents Nos. 1 to 3 referred to by the appellants raised by the Crown Government. The order of the High Court in the Civil Suit is, therefore, liable to be set aside. We accordingly set aside the order passed by the High Court against these appellants who filed and direct the trial Court to proceed with the suit. The appeals are accordingly allowed. Respondents Nos. 1 to 3 shall pay the costs of the appellants.

Appeals allowed.

1985 JUL 1, 3 425  
(SUPREME COURT)

From Allahabad:

E. S. YADHATARAMAN AND  
M. P. THAKKAR JJ.

Civil Appeal No. 274 (C.B.) of 1983 Dv  
25-4-1985

Anwar Hossain, Appellant v. Raju Gaudin  
Respondent

(A). *Representatives of the People Act (R) of 1951, Ss. 83, 86, 87* — Election petition — Grounds of — It can be for non-compliance of provisions of S. 83 or for failure to cooperate in production of material facts and particulars relating to alleged corrupt practices — Power to dismiss can be exercised at threshold. Cr.P.C. 154 (1961), O. 1, R. 10.

1985 JUL 19, 20 426

An election petition can be and must be dismissed under the provisions of Cr.P.C. if the mandatory requirements imposed by Section 83 to incorporate the material facts and particulars relating to alleged corrupt practices in the election petition are not complied with. The Code of Civil Procedure applies to the trial of an election petition in view of section 87 of the Act. Since Cr.P.C. is applicable, the Court trying the election petition can act in exercise of the powers of the Code including Order 4 Rule 14 and Order 7 Rule 11(a). Therefore, that because it does not find a place in Section 86 of the Act which authorises dismissal of election petitions in certain circumstances does not mean that power under the Cr.P.C. cannot be exercised. An election petition can be summarily dismissed if it does not furnish material facts or material facts in support of the petition under the Cr.P.C. and it is settled law that the content of a single material fact would not constitute complete cause of action and then an election petition without the material facts relating to corrupt practices is not an election petition at all.

(Para 7-12)

The contention that even if the election petition is liable to be dismissed summarily it should be so dismissed only after recording evidence and not at the threshold is thoroughly misconceived and untenable. (Para 12)

Even in an ordinary Civil dispute the Court usually reserves the power to reject a plea if it does not disclose any cause of action or the power to direct the respondent party to disclose the necessary material, facts and circumstances of the pleadings. Such being the position in regard to matters pertaining to ordinary Civil disputes, there is greater reason why it is desirable to say so in regard to a matter pertaining to an elected representative of the people which is likely to interfere with the discharge of his duties towards the Nation. The controversy is not as one of the content of the facts of the case and the law to be applied.

(Para 12)

(B). *Representatives of the People Act (R) of 1951, Ss. 83, 120(7)* — Election petition — Corrupt practices — Material facts and particulars — Allegation that gazetted officer appeared as Govt. controlled news media and made speech praising elected candidate

— *Moral facts and particulars stated for record.*

Where the corrupt practice alleged in the election petition was that a District Officer appeared under Govt. controlled news media and made a speech praising the elected candidate and all the way round was the servants of the petitioned officer were praised and observed by the elected candidate his agent and other persons with the consent of the candidate with a view to assist the candidature of the prospects of his election. It could not be said that material facts which would state the persons with a view of action and which will call for an inquiry from the respondent candidate were pleaded. It was not mentioned as to who prepared or observed the servants of the petitioned officer or what manner he observed the servants and what were the facts which were to show that it was with the consent of the elected candidate. Nor was it shown which if any facts were to show that the speech was in furtherance of the prospects of the elected candidate's election. The petition also did not declare the exact words used in the speech or the date and time of making such a speech. Unless the relevant offending passage from the speech is quoted it is neither read objectively nor read and is not certain and whether it was intended to promote the election prospects of the elected candidate. (Para 28)

(C). Representation of the People Act (43 of 1950), Sec. 83, 128(7), 87 — Corrupt practice — Statements of material particulars — Allegations that objectionable charges had been passed — Names of workers employed by the elected candidate or his agent who passed charges not material and particular — It amounts to failure to incorporate material particulars — Petition holds to be dismissed. (Para 29)

(D). Representation of the People Act (43 of 1950), Sec. 83, 128(7) — Corrupt practice — Statement of material particulars — Allegations that returned candidate gave corrupting speeches — Times, date and place of speeches not given — Exact content of speeches not given — Allegations that statements were in order to prejudice objective of candidate who stood — Held, material ingredients of corrupt practice were not spelled out. (Para 30)

(E). Representation of the People Act (43 of 1950), Sec. 83, 128(7) — Corrupt practice — Displaying objectionable poster in constituency — Copy of the poster not produced — Name of publisher of the returned candidate who put up poster and facts spelling out content of returned candidate or his agent stated — Petition suffers from lack of material facts. (Para 31)

(F). Representation of the People Act (43 of 1950), Sec. 83, 123 — Corrupt practice — Distribution by returned candidate of leaflets containing objectionable statements in constituency — No attempt to show the leaflets were published with consent or knowledge of returned candidate — Fact showing that distribution of leaflet was with consent of returned candidate, passing — Offending paragraphs not quoted in election petition — Petition suffers from lack of material particulars. (Para 32)

(G). Representation of the People Act (43 of 1950), Sec. 83, 128(4) — Corrupt practice — Distribution of pamphlet relating to personal character of a candidate — No attempt to put in as to by whom, where and to whom they were distributed — Petition does not disclose cause of action for want of material particulars. (Para 33, 34)

(H). Representation of the People Act (43 of 1950), S. 123 — Corrupt practice — Distribution of pamphlet casting aspersions on personal character of a candidate — Particulars as to who had printed, published or circulated the pamphlet, when, where and how it was circulated and how to indicate returned candidate's interest in such distribution absent — Perhaps do not disclose a cause of action. (Para 35)

(I). Representation of the People Act (43 of 1950), Sec. 83, 87, 81 — Crd. P.C. (1969), § 7 & 11 — Election petition filed on last day of limitation — Petition based on material facts and particulars relating to alleged corrupt practices — High Court dismissing it under § 7 & 11 as not disclosing any cause of action unless it regarding it — Held, fact, that High Court was impressed, dismissed cannot be required, did not make any difference as to facts, petition could have been filed within limitation. (Para 36)

(5) Representation of People Act (61 of 1951), s 123 — Corrupt practices — Expenses a negative and efficient — Its replacement by moral and sufficient expression disapproved practice suggested.

(Para 48)

Case	Referred	Chronological	Para
AIR 1985 SC 85			30
AIR 1984 SC 309			30
AIR 1979 SC 234	(1979) 1 SCC 233		17
AIR 1971 SC 194	(1971) 1 SCC 334		11
AIR 1973 SC 345	(1973) 2 SCR 193		
		10 14 16	
(1970) 1 SCC 139	1970 13 (SC) 753		
		30 24 25 26 30	
AIR 1965 SC 754	(1965) 2 SCR 217	14 30	
AIR 1965 SC 1208	(1965) 3 SCC 336	11	

**THAKUR, J .—** An election petition being filed on the ground that it did not comply with the mandatory requirements in terms of material facts and particulars required by s 83 of the Representation of the People Act and that it did not disclose a true picture, the election petitioner has appealed to the Court under s 116-A of the Representation of the People Act of 1951 (Act).

2 The respondent was elected as a Member of the Lok Sabha from the Ambedkar Constituency of Uttar Pradesh in the general elections held on 13th December 1984 under Section 13 of the Act. Having secured the highest votes (2 65 940) the respondent was declared as elected on December 20 1984. On 11th February 1985 the petitioner challenged the election; the appellate facts claim to be a worker of the Bahadur Singh Munshi as elector from the Ambedkar constituency. That the election was going on in the present appeal.

3 The election of the respondent-elect as respondent herein was challenged on the ground of alleged corrupt practices as defined by the Act. Several grounds are set out in paras 4 to 10 of the election petition were called into aid in support of the challenge. The respondent upon being served signed a written statement, raised preliminary objections to the maintainability of the petition on a number of grounds, the concluding that the petition was lacking in maintainability and particulars and was defective on that

account, and that none of the grounds were open to be sustained. The appellate on being served two applications for amendment of the election petition. Some of which was for supplying the material facts and particulars which were omitted. Affidavit applications were filed together and were disposed of by the judge on the appeal upholding the preliminary objection raised on behalf of the respondent and dismissing the election petition. Hence the appeal.

4 It is a democratic polity chosen is the mechanism devised to secure the true values and the will of the people in the matter of choosing their political managers and their representatives who are supposed to echo their views and represent their interests in the legislature. The members of the Election are subject to political scrutiny and control only with an eye on two ends. First, to ascertain that the true will of the people is reflected in the election of second, to secure that only the persons who are capable and qualified under the Constitution to represent the people in order that the true will is ascertained the Courts will step in to prevent and safeguard the purity of Election for. Corrupt practices have influenced the results, or the elections has been a matter of fraud or deception or compliance on any material matter, the will of the people as recorded in their votes is not the true will and will corrupt unduly by dishonest choice. It is not the will of the people that the true will is all. And the Courts would therefore assume a reason to perfect in setting aside the election in accordance with law if the corrupt practices are established. So also when the material qualifications for eligibility demanded by the constitutional requirements are not fulfilled, the fact that the successful candidate is the true choice of the people is a consideration which is totally irrelevant. Maintaining the fact that would be usually impossible in it may be constitutional concern the votes of the people in the free election the law however having changed. And also acknowledging the fact that corrupt practice considerably expenditure of public money has to speak of private funds and result in local public loss, and accordingly there would be good reasons for upholding at least the election which without the true will of the

people's liberty. In matters of election the will of the people must prevail and Courts would be undemocratic, extremely slow to act, at least the will of the people truly and fairly ascertained. If Courts were made inflexible, the Courts would be putting their will against the will of the people, or considering the change of the people without any object over or against. But where corrupt practices are established, the result of the election does not show the true will of the people. The Courts would not then be doing by the alleged constitutional result in the corruption, without any relevance. Such would be the approach of the Court in an election matter where corrupt practices are established. But what should happen when the electoral laws and procedures all for alleged corrupt practices are not followed and the persons have not done a state of action which the relevant candidates can make law be called upon to answer? The High Court has given the answer that a case is summarily dismissed. The applicant has challenged the validity of the order of the High Court.

5. Learned counsel for the applicant has urged four reasons in support of the appeal viz.

A — Since the Act does not provide for detailed rules concerning election on the ground that material particulars necessary to be supplied in the election petition as required by Section 83 of the Act are not incorporated in the election petition inasmuch as Section 86 of the Act which provides for summary dismissal of the petition does not refer to Section 83 of the Act there is no power in the Court to dismiss election petitions to dismiss the petition even on a finding of perjury under the Code of Civil Procedure.

B — Even if the Court has the power to dismiss an election petition summarily under rule 24 under Section 84 of the Representation of the People Act, the power cannot be exercised at the threshold.

C — In regard to seven grounds of challenge embodied in paragraph 4 of the election petition viz. 1 B) 3-4-5-10-11-12-13-14 and 15 the High Court was not justified in dismissing the petition.

*(continued)*

D — Even if the petition under the Code of Civil Procedure is not dismissed by the Court leaving election petition to be referred to a judge, an election petition may be rejected under Order 22 Rule 11 of the Code of Civil Procedure but it is not to be dismissed.

#### GROUNDS A

4. In order to understand the plea, a glance at Section 84 of the Act so far as material is called for —

85. Causes of petition. — (1) In election petition —

(a) shall contain a concise statement of the material facts upon which the petitioner relies;

(b) shall set forth full particulars of any corrupt practices that the petitioner alleges including as full a statement as possible of the names of the persons alleged to be so connected with corrupt practices and the date and place of the commission of each of such practices and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings;

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by affidavit in the prescribed form of support of the allegations of such corrupt practice and the particulars thereof.

(2) Any affidavit or statement by the petitioner shall also be signed by the petitioner and verified in the same manner as the petition.

86. Trial of election petition. — (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 85 or section 117.

Explanation. — An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (c) of section 85.

7. The argument is that where the legislature wanted to provide for summary dismissal of the election petition, the legislature has spoken on the matter. The intention was to provide for summary dismissal only in case

and therefore we strongly recommend the implementation of these two in all our MIP and real-time MIP.

8. The sequence in that streambed at Section BMT is not shown on a Section in the north of the property nor shown on C-10.

50. **Prevention of pneumonia** – (1) All persons participating in frequent activities may be protected on one or more of the grounds specified below, according to the provisions of Section 104, under High County regulations in relation to any other suitable facilities, days, hours, but not later than the date of cessation of the relevant measures of control. (2) The number of persons who are present at any one time at any of the places of the above two places are not more than the number of those two days.

**Registration.** In the referendum election, make a pencil mark on the ballot to vote in the election in which the election person places "X" after he has voted in both elections on Oct. 1.

13. Every classroom procedure should be accompanied by a family copy, stored in their independent manuscript in the process and every such copy shall be signed by the prisoner under his own signature to be a measure of the program.

52. **Parole to the prison** — A prisoner shall not be removed to the prison —

is where the processor is advised, to clearing declaration that the absence of validity of the reserved card clear is equal to have no other declaration that he himself or any other candidate has been duly cleared all the country candidates after that the processor and where on each further declaration is cleared all the reserved candidate and

for any other activities against whom allegations of any corrupt practice are made in the petition.

(17) *Severance for costs* — (1) At the time of proceeding in default petition, the petitioner shall deposit in the High Court an amount equal to the value of the High Court's copy of two thousand rupees as security for the costs of the suit.

(3) During the release of the trial as a direct prisoner, the High Court may at any time call upon the prisoners to give such further accounts for the charges mentioned.

compliance with which is not deemed to be a condition precedent to failure that non-compliance with the requirements of Section 81 (a) even though mandatory, did not have the consequence of dismissal. Now it is not disputed that the Code of Civil Procedure (CPC) applies to the trial of a plea in bar by virtue of section 81 of the Act.<sup>1</sup> Since CPC is applicable to the court, trying the dismissal plea, it is, in essence, the power of the Code including Order in Rule 14 and Order 7 Rule 14 which vest, in —

**Order & Page 16: Starting out proceedings —**  
The Court may initiate steps of the proceedings  
order when search out or identify material  
and, proceed —

all which may be necessary conditions  
for the existence of a system, or

(b) which required segregation standards to deliver the first half of the year 2011

g) relative importance of the parts of the system

**Order 7 Rule 13** Responses of plans – The plans shall be required as the following, Order 7.

at various of these and therefore a range of  
**systems**

17. Procedure before the High Court. — (1) Subject to the provisions of this Act and of any rules made thereunder, every district petition shall be tried by the High Court, is liable as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908<sup>1</sup> as amended to the trial of the case.

Provided that the High Court shall have the discretion to refuse to set aside an order made in a summary trial if it is satisfied that the decision of the justice that the evidence of such witness or witnesses is not material for the decision of the petition or that the party conducting such witness or witnesses is acting in bad faith or is guilty of such conduct as renders it inequitable to set aside the proceedings.

(c) The provisions of the Indian Evidence Act, 1972 (1 of 1972) shall subject to the provisions of this Act, be deemed to apply to all proceedings the trial of which have not been completed.

4. The fact that Section 33 does not lend a place to Section 34 of the Act does not mean that powers under the CPC cannot be exercised.

5. There is thus no inference in the past which is already concluded against the applicant in *Barbours Ltd v. General Singh* (1975) 1 SCR 743. (1980) 120 SC 493-494. The Court has in former regarded this very place in the context of the manner of dismissal facts and particularly relating to the corrupt practice alleged for the election petition was not accompanied in the election petition as well for evidence from the following passage extracted from the judgment of A. N. Ray J who spoke for the three judge bench:

The allegations in paragraph 18 of the election petition do not amount to any imputation of material facts of corrupt practice. It is not stated as to which kind of facts of imputation was obtained or procured or attempted to obtain or procure. It is not stated from where the particular type of imputation was obtained or procured or attempted to obtain or procure. It is not stated as what manner the question was for the determination of the process of the election. The gist of the charge of corrupt practice within the meaning of Section 113(1) of the Act is obtaining or procuring or attempting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the material and essential material fact to furnish a cause of action.

Caused as well of the respondent pleader that the election petition could not be dismissed by reason of want of material facts because Section 34 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 31 or Section 32 or Section 113 of the Act. It is emphasized that Section 34 does not place in power 34. Under Section 34 of the Act every election petition shall be tried by the High Court as nearly as may be in conformity with the procedure applicable under the Code of Civil Procedure. (1980) 120 SC 493-494. It is not that which does not furnish cause of action can be dismissed.

11. In fact, the provisions of the Act is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action or attempt

of the petition under the Code of Civil Procedure. So also it emerges from the material facts that appropriate relief in exercise of powers under the Code of Civil Procedure can be granted if the mandatory requirements specified in Section 31 of the Act to incorporate the material facts in the election petition are not complied with. The Court in *Barbours Ltd v. General Singh* (1975) 1 SCR 743. (1980) 120 SC 493-494 has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to corrupt practice is not an election petition at all. So also in *General Singh v. State* (1975) 1 SCR 743. (1980) 120 SC 493-494 the law has been enunciated that the petition facts which must be proved by a party to establish a cause of action in the election or material facts. In the context of the charge of corrupt practice would mean that the facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed in the charge. Whether such election petition is particular facts material and not as such required to be pleaded is dependent on the nature of the charge (alleged) and the circumstances of the case. All the facts which are material to define the petition with complete cause of action may be pleaded and failure to plead even a single material fact would constitute a deficiency of the material of Section 31(1) of the Act. In election petition, therefore can be said that, be dismissed if it suffers from any deficiency. The first ground of challenge must therefore be:

#### GROUND 1

12. The respondent in the proceedings first argued that in any event the party to reject an election petition summarily, under the provisions of the Code of Civil Procedure should not be allowed to do so. It is submitted that the respondent has the right to proceed with the trial period for evidence and only after the trial of the election petition is concluded that the parties go to the Code of Civil Procedure for dealing appropriately with the defence, petition which does not furnish cause of action should be dismissed from respect as the learned counsel. It is an argument which is difficult to comprehend. The whole purpose of condemnation of such power is to ensure that a litigation which is unnecessary and bound to prove should not be permitted to occupy the time of



the voters and maintain the mind of the respondent. The intent of Danowski would not be to keep hanging over his legal constituency, as those point or person. Danowski's intention, if not to gain the Court's nod, is to ensure the power to reject a piece of a case not decided any more than so. On the power to dismiss the concerned party to strike out unnecessary, scandalous, irrelevant or irrelevant parts of the pleadings. Or such pleadings which are likely to cause unnecessary delay, the law and of the court or whether otherwise conduct of the process of law. An order dismissing a party or strike out a part of the pleading would result in the termination of the case, leaving in the mind of the said pleading. The Court is a source of the powers under the Code of Civil Procedure which to mean any point going in the mind of the master and the power to act in person or incommunicable as a preliminary point and can dismiss the case without proceeding to record evidence and hear dispositive arguments in the context of such evidence. If the Court is satisfied that the action would interfere in view of the merits of the preliminary point of objection. The contention that even if the case law is found to be to be dismissed, it should be to be dismissed only after recording evidence and thoroughly investigated and reasonable arguments. The power in the belief we mean to be exercised to serve the purpose for which the same have been conferred on the competent Court so that the litigation comes to an end as the matter and the concerned parties are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so they may not adjust their affairs on the footing that the litigation will make demands on their time and resources and therefore their future work and they are free to undertake and fulfil other commitments. Each being the position as regard to the mere performing to ordinary Civil litigation. There is general human for doing the same work as regard to members personally to decisions. Before the subject of Danowski at the various private reasons being an elected member of the Legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which characterizes an elected representative of

the concerned constituency. The law and manner-disposed by facilitated effect will have to be directed to these persons, in the context of the election process. Instead of being engaged in a campaign to reject the persons of the people at different and of the members of the constituency who voted him into office, and instead of considering their problems, he would be occupied accepting or rejecting that he has or has been duly elected. Instead of discharging his functions as the elected representative of the people, he will be engaged in a struggle to establish that he is indeed such a representative notwithstanding the fact that he has in fact won the votes and the confidence of the electorate at the polls. He will have not only to win the vote of the people but also to win the vote of the Court as a legal officer not because before he can whole heartedly engage himself in discharging the trust reposed in him by the electorate. The pendency of the election process would also not be conducive if he is concerned with some public office of elected capacity. Many members concerned to deal with the representations of foreign points who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election process calling into question his election is pending may at a given time act as a psychological factor and may not permit him to act with full freedom. One of the major of emotional disturbance introduced by the pendency of an election process may have some impact on his subconscious mind, whether his own being or becoming aware of it. Under the circumstances, there is greater reason why in a democracy as far as regard to a member pursuing to an elected representative of the people which is likely to extend him in the discharge of his duties towards the people. On the contrary, it is as far as the nature of the laws of the state and the law to maintain. Since the Constitution power to act in the context of the power may be exercised as the threshold must ensure the Court is satisfied that it is a fit case for the exercise of such power and that exercise of such power is warranted under the relevant provisions of law. The word apply the challenge is intended that the power to dismiss or reject an election process or part appropriate action should not be exercised except in the stage of final judgments after examining the evidence and of the fact of the

these various content of such power as the Court holds it to contain, that the legislature transferred these powers without power or purpose that the election must stand up to the presence of the persons which should be treated as witnesses. The Court cannot assume in such a proposition. The witnesses sought by the learned counsel for the petitioner in the trial court should be fairly supplied.

#### GROUND C

13 The learned counsel for the election petitioner has very fairly contended that out of the 17 grounds submitted in the election petition grounds other than the seven introduced by him cannot be proved in evidence and that he would require his witnesses to these seven grounds. It is therefore unnecessary to submit to grounds other than the seven grounds which have been relied on in support of this petition. We will accordingly proceed to consider the plea urged to the effect that in regard to the alleged alleged misrepresentation the High Court was not justified in demanding the election petition.

14 Before we deal with these grounds raised, we consider appropriate to state the initial principle of law as emerges from the numerous decisions of the Court which have been cited before us in regard to the question as to what exactly is the content of the expression material facts and/or conduct which the election petitioner must incorporate in his petition by virtue of Section 121(1) of the Act.

#### (1) What are material facts and proceedings?

Various facts are facts which if established would give the petitioner the relief asked for. The one required to be answered is whether the Court could have given a decree without or without all the election petitioners in case the election petition had been proved to support the election petition on the basis of the facts pleaded in the petition. [AIR 1973 SC 1277 AIR 1969 SC 1261 — *Manohar Manohar Amarnath v. Pappalal Manohar Amarnath*]

(2) As regards the alleged corrupt practice pertaining to the assistance obtained from a Government servant the following facts are essential to enable the person with a claim of action which will call for an inquiry from the

required candidate and must therefore be pleaded. [AIR 1973 SC 1262 AIR 1973 SC 1261 — *Manohar Lal v. Kamal Singh*]

(a) mode of assistance

(b) nature of assistance and

(c) all various forms of their payment, as the case may be.

(3) In the context of an allegation in regard to procuring, obtaining, offering or attempting to obtain or procure the assistance of Government servant evidence is substantially essential to prove the following

(a) fact or form of assistance obtained or procured

(b) when, where, the assistance was obtained or procured or attempted to be obtained or procured by the election candidate for procuring the prospects of his election. [AIR 1973 SC 1277]

(4) The required evidence must be adduced when assistance is was supposed to have sought the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured. [AIR 1973 SC 1277]

(5) There must also be a statement of the election petition according to the manner in which the prospects of the election was furthered in the way in which the knowledge was obtained. [AIR 1973 SC 1277 (supra)]

(6) The election petitioner must state and establish the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in the petition. [AIR 1973 SC 1277 (supra)]

(7) And having stated the material facts as regards to the content of the expression material facts, the next is now type to proceed to deal with the grounds in which the election petition material facts are stated. [AIR 1973 SC 1277 (supra)]

(8) Alleged corrupt practice of a Government servant is a corrupt practice as defined in Section 123(1) of the

The doctrine of the independent liability is to be discarded and because the respondent was guilty of the following corrupt practice as defined under Section 123(1) of the

Implementation of the People's Act. The said said Section 100(1)(b) and 100(1)(c) of the said Act the said campaign practice was connected with the campaign of the respondent evicted candidate and of other evicted candidates with his consent. In this sense it was contended by the respondent's agents as the members of the evicted candidate and the said campaign practice has manifestly affected (prejudiced) the election in favour of a candidate the evicted candidate. One M R Begg who at one time was the Chief Justice of the Supreme Court of India and is a close friend of the "Nehru family and is personally known (and) friendly with the respondent appeared on the government controlled news media and made a speech praising the respondent and comparing his entry into politics as the best of new Aryans, the statement being that the opposition were the Kauravas. His appearance on the television was relayed day after day on the government controlled media. Television articles have resulted in practically every district office of the respondent in America commencing and throughout the election campaign thousands and thousands of voters were exposed to the television appearance and speech of the said Mr Begg. Mr Begg is a gazetted officer being the Chairman of the Minorities Commission. His services were procured and obtained by the respondent. In agreement other persons with the consent of the respondent with a view to assist the furtheration of the prospects of the respondent's election. Mr Begg was seen and heard on the television as late as 31st December 1984. Propaganda about Mr Begg's was done particularly amongst the members of the Muslim community. Apart from being a member of the office of Chairman of the Minorities Commission, the same consented a great campaign practice under the election law.

*Why the High Court held that material facts and particulars are stated and did not declare it as a matter of law?*

## II. The High Court observed :-

The submission of the learned counsel for the respondent was that there was pleading that Mr Begg was a person in the service of the government; an according to the learned counsel, the Chairman of the Minorities Commission is not a person in the service of

the government. Learned counsel for the petitioner said that the petitioner had specifically pleaded that Mr Begg was gazetted officer who occupies a pleading that he was at the service of the government. Learned counsel for the respondent says that simply because a person is a gazetted officer it is not necessary that he must also be a government servant because the appointment of a person person is gazetted and yet some of them may not be government servants. So that as a day, the government has the petitioner had not stated in the pleading that Mr Begg was a person at the service of the government as specifically required by Section 123(7) of the Act. The requirement is a requirement of the statute and is therefore a material fact within the meaning of Sec. 123(1) of the Act. Similarly the statement that the services of Mr Begg were procured and obtained by the respondent, his agents and other persons with the consent of the respondent, is clearly a fact as disclosed above. It was incumbent upon the petitioner to specify which of the three alternatives he wished to plead, in particular it was necessary for him to indicate the nature of the respondent's agents and other persons to enable the respondent to know that what was the case. That he was expected to make learned counsel for the respondent further contended that the petitioner has not set out the exact words used by Mr Begg in his speech the respondent, a speech praising the respondent and comparing his entry into politics as the best of new Aryans, it was what Mr Begg might have said. In the case of K. M. Nayyar P. J. Ansony (1979) 1 SCC 121, AIR 1979 SC 1246, the speech made by a Police Officer endorsing the election of an elected member to support a candidate was questioned. It was held that a mere recitation of the history of the speaker of information was not enough and that transcript of the alleged speech or contemporaneous record of the points of it that substance of the speech should have been made available. In those circumstances, the proposed pleading as the paragraph does not set out the material facts and therefore constitutes an attempt to plead a mere matter Section 123(7) of the Act.

Whether the High Court was right in taking the aforesaid view.

III. The respondent contended a paragraph 4 paragraph, in Ground No. 1 do not apply,



These slogans were also posted on pages of the vehicles used by the respondent's workers during the course of campaign. On every occasion these slogans were carried and handled from vehicles and from newspapers, used at public meetings and from the Congress (U) party office in the premises of the respondent. The use of such slogans was the job theme of almost every speech delivered in the constituency during the election campaign. The use of these disseminable slogans and posters handed to newspapers and the respondent must have known to state the fact that they had seen and with his consent he would have taken some steps to reproduce them or have that was disseminated. Photographs of walls with the said slogans along with circulation as 'be' filed in Exhibit A.

Why did the High Court hold that material facts and particulars are shown and did not disclose a state of mind?

It is the context the High Court observed —

The contention of learned counsel for the respondent is that the pleading fails to show facts of material facts because the names of the workers employed by the respondent or his agent who posted the slogans is omitted that is speeches or broadcast from the vehicles have not been indicated. It is pointed out the allegations regarding the posting of slogans is vague because it is stated to have been done by workers and/or his agent, specifying that the posters handed to the workers whether posting work was done by workers employed by the respondent or by agent or by both. I have already pointed out that the kind of material is vague and embarrassing and therefore, in coming to the concept of material facts, in the case of *Shah Singh v. East Bhandra Singh* (1976) 3 SCC 288 it was held that the allegations that a marriage in different villages, speeches were given on 5th and 12th May 1966 was vague at the absence of a specification of date and place of each meeting and evidence could not be permitted to be led on the matter. The allegation of committed the respondent to the posting of the slogans or to their statements at the speeches of his workers is only irrelevant. There is a discrepancy between context and contention. The pleading is in the nature of a pleading of conspiracy and

not of conspiracy which is not enough, vide the case of *Chhanna Lal Sahu v. State of Orissa* AIR 1984 SC 109. In the case of *Samudra Singh v. Harnath Singh* AIR 1980 SC 49 a has been indicated in para 37 that consent is the life line to linking the candidate with the agency of the other person which may amount to corrupt practice unless specifically pleaded and clearly proved and proved beyond reasonable doubt, the candidate cannot be charged for derivation of votes.

Whether the High Court was right in taking the pleaded facts.

It. There is a pleading material to mention the means of the vehicle used to have been employed by the respondent or his agent who have allegedly posted the slogans. It shows material particulars as given in regard to the vehicles on which the said slogans have been and vehicle have passed. There are no material particulars or facts. We are of the view that material as the material facts and particulars is required to the alleged posting has not mentioned and the High Court was justified in taking the view that it had taken. The argument advanced in regard to the charge sheet is not really the one and done by the various members of the Court advanced in substance. A Division Bench of the Calcutta High Court in *Ran Kishore Singh* (1976) 3 SCC 289 speaking through Bhargava J has observed —

The pleading was so vague that it left a wide scope to the appellant to adduce evidence in support of a meeting many places so any that this he found convenient or for which he could produce witnesses. The pleading which was vague and not stating material particulars for no evidence should have been permitted by the High Court on this point. (para para 8.)

It. The grounds laid down is that the pleading is vague in matters where there is scope for creating unalleged corrupt practice in a relevant paragraph in the context of a meeting of which date and particulars are not given would tantamount to failure to incorporate the material particulars and that material as there was a possibility that witnesses would be produced in the context of a meeting in a place or date convenient for adducing evidence, the High Court should

but must have perceived evidence on this point. It is also worth to mention if evidence could cross the basic defect in the pleading and the pleadings are good enough contained in any pleading, no matter of action. In the light of the above principle laid down by the Supreme Court which has held, the fact not more than 15 years, the High Court was perfectly justified in reaching the conclusion called into question by the appellants.

#### GROUND II (a)

23. Alleged corrupt practice is incorporated in Ground II (a) read as under :-

The respondent himself owned the constituency on the 10th and 15th December 1984. On the night of the 11th or 12 he was entering the constituency he was stopped by the prisoners' workers in Indira Nagar. The walls there bore these slogans. The prisoner along with other workers stopped the respondent vehicle and drew him towards the 1st or 2nd slogan. The respondent was making objectionable in these slogans. He was requested to give instructions to the vehicles that these should be removed and be conspicuously had the workers damaged and damaged. He declared that their leader belonging to this. Whether Gandhi drawing nothing better. The respondent delivered a speech speeches during the course of his visit. In none of these speeches did he repudiate these slogans. He repeatedly referred to the assassination of his mother and to the *Samadhi Bhairav* saying that the opposition had encouraged demonstration and violent elements and that the opposition conduct of the past had given rise to the notion that had a severely when the Prime Minister has modern life. We managed that the situation were false, and then asked the nation to make up their minds whether they still wanted anybody from the same community to succeed in the election.

Why, the High Court held that material facts and particulars are disclosed that constitute a cause of action?

#### 24. The High Court observed

Learned counsel for the respondent correctly contends that these particulars are not proper because they do not disclose the prisoners' workers who stopped the

respondent or furnish details of the speeches in which the respondent was reported to repudiate the dispute. He has also correctly urged that the pleaded request, if any, to the respondent for instructions to the witnesses, was unsuccessful and did not establish any abridgment of the respondent to direct the witnesses regarding propriety of the evidence for.

Whether the High Court was right in taking the above view?

25. In this case also we note that and place of the speeches delivered by the respondent have been mentioned. No more extracts from the speeches are quoted. We have also material facts showing that such payments imposed on the respondent were subject matter have stated. No allegation is made in the effect that it was in order to prevent the election of any candidate. Or in order to further the prospects of the election of the respondent. The material ingredients of the alleged corrupt practice have thus not been spelled out. So far as the material is concerned the principle<sup>1</sup> laid down in *Patal Singh case* (1974) 3 SCC 129 is applied in the context of the charge contained in ground II (a) is answered. The view taken by the High Court in this regard is unimpeachable.

#### GROUND II (b)

26. The alleged corrupt practice is incorporated in ground II (b) read as under :-

During with the respondent speeches his workers with the knowledge and consent of the respondent and other agents of the respondent associated with the task of conducting the election campaign caused a poster of Hindu last. Under is his alleged in all prominent places throughout the constituency. The next poster was a facts page of the *Hindustan* newspaper of 204 84 called the 1st Special. The 1st that year was on 1st July 1985. The

<sup>1</sup> The pleading was so vague that it left a wide scope to the appellants to adduce evidence in support of a finding at any place on the claim that he found convenient or for which he could procure witnesses. The pleading object was to raise and was making minimal particulars that no evidence should have been produced by the High Court on the point.

hiding of the real power which was underlined as not altogether surprising between the leader of the petitioner party and Blackstarwire. Photographs of Mrs. Mariana Gaudin and Blackstarwire appeared separately on left and right hand corners of the real advertisement. A small English translation of the poem is given below: — A copy of the real poster will be filed in Exhibit B. The poster also purports to name a female copy of a letter dated the 20th September 1983 purporting to be addressed to the Kalpana Sankar, a member of the Kalpana Sankar Manco to New Blackstarwire. The letter is a forgery and the two forged newspapers, named by alleged author of the alleged letter and a second date is pending to the master himself. The letter was obtained expressly for the express purpose of showing: —

- (a) that Mrs. Mariana Gaudin was a secret conspiracy with Blackstarwire;
- (b) that Mrs. Mariana Gaudin illegally supplied arms to Blackstarwire and other businessmen and lawyers.

If that Mariana Gaudin was in sympathy with the various organizations within domain of the country and the use of violence to achieve that end.

The real allegations are totally false and irrelevant. The respondent knew them to be false. He did not and could not believe them to be true. This complacency was made to the District authorities about the obscenity and pornography and posters in which the names of the respondents had been drawn. The said authorities were clearly warning that it is not election agents and workers as well as in the press correspondents that they were reprehensible such as steps to release or obstruct them. From other newspapers and press correspondents concerned in obscenity and election agents and workers has the respondents or his workers look to steps whatever counterparty politicians, candidates and are. The respondents continued and increased the obscenity and violence of the poster. He did nothing to stop the use derived by his workers. The real posters remained above and the poster were put out at Congress (I) Party's. These were delivered by two persons mentioned by himself. Giving of some of the newspaper copies will be filed in Exhibit C.

Why the High Court held that material facts and particulars about actual ownership of some of arms?

## II. The High Court held

It appears to me that as evidence of fact was material part of the pleading, it must be considered to be an integral part of the petition. If such an evidence is not actually put at the election petition, the petition suffers from the lack of material facts and therefore the statement of state of action would be incomplete. If it is stated in the election petition either in the body of the petition matter by way of statement, but to copy what furnished in the respondent, the election petition would be held by the master of himself. He is read with Section 10(1) of the Act. In any event, the reference to the power and its present intention in the election petition which was never incorporated and it, are material facts under Section 10(1) of the Act and the election cannot now be made good by virtue of an amendment. The pleading as a matter of law would a case permitted to be amended would suffer from lack of cause of action in the material fact and, therefore, is liable to be struck out. The newspaper cutting are too small to be printed in continuing text, but only as evidence to the master of himself is allowed.<sup>2</sup>

Whether the High Court was right in taking the amended view?

It will be noticed that in the election petition a has been mentioned that a copy of the petition would be subsequently filed and the covering obscure newspaper reports would also be filed later on. The election petition might as well have been to follow the statement on both these aspects. The High Court rejected the prayer in regard to poster (Ex. B) has granted the prayer in respect of the cutting. The High Court has taken the view that the poster was claimed to be an integral part of the election petition and hence it is not filed (questioning why to submit the respondent) the pleading suffered from deficiency of non-compliance with Section 10(1) read with Section 10(2) of the Act. Filing of the poster related to the election petition, as the election stated the petition either from lack of material facts and therefore the statement of state of action would be incomplete.

Proving mere use of the last number of the number a copy of the last poster would be filed as Exhibit B. Not allowed to be removed under disclosure provisions were deleted or pruned for by the applicant. The last remains that no copy of the poster was produced. It was also he stated that the disclosure provisions deleted work to produce the copy of the poster, but only under a finding that it deleted so that it cannot be said that the arrangements were not produced along with the statements. The last remains that without the production of the poster, the issue of statements would be complete and it would be final as the disclosure provisions attached to the material facts and paragraphs would be wrong. So also it would not enable the respondent to prove the case. Apart from that the most important aspect of the matter is that as the statement of the nature of the respondent's conduct, or material facts, without the knowledge and consent of the respondent or his disclosure agent, the cause of action would be complete. So much so that the principle is recognized by the Court in *Pratt v. Higgs* case [1978] 13 BCLR 235 (supra) would be attracted. And the Court would not even have permitted the disclosure provisions raised evidence on this point. The High Court was therefore fully justified in giving the writ that it has taken.

#### GROUND XII

It alleged corrupt practice as incorporated as ground No XII reads as follows:-

That, in the later half of June 1983 a family friend of the respondent and a very close and intimate friend of the respondent's mother, Shri Muhammad Yousaf, wrote a book called *Son of India*. A newspaper called the *Son of India* newspaper published the book, it was printed by Yasirul, Printer of Rural High, New Delhi. The *Son of India* newspaper circulated among others of Minister, Parliament, Raj. M. P. the Executive President of the Congress (I) Shri Karan Singh, Members, Shri Ram Kishore, and Shri Sanjiv Kumar. The book starts with a preface by the author, written by Parbhat Singh, Shri Haniffa (supra) and the author and a foreword by a 22 page story of the two brothers, namely the respondent and his late brother Shri Sanyu Gaudilo. The book was written, printed and published with the knowledge, consent and

consent of the respondent. The respondent by himself by the photo by his mother and through other persons acting with the consent of the respondent and/or his disclosure agent, distributed the said book as the Author's consent, during the entire course of the election campaign. The said book contains paragraphs which are false and which is the knowledge of the respondent were believed to be false. The said statements are in relation to the personal character and conduct of Mrs. Manisha Gaudilo. The said statements were reasonably calculated to prejudice the prospects of the petitioner's election. All statements made in relation to the character or conduct of the petitioner are totally false. In particular, the petitioner says that the following statements made therein were the disclosure statement and constitute a gross corrupt practice within the meaning of Section 123(4) of the Representation of the People Act, 1951. The said corrupt practice has been committed by the respondent, the returned candidate. It has also been committed by his disclosure agent and by other persons with the consent of the respondent and/or his disclosure agent. A copy of the book in question *Son of India* will be filed as Exhibit F. It has also been committed as the parent of the respondent returned candidate and by his agent. The said corrupt practice renders the election of the respondent invalid as he so acts and declared void, as a result of Section 106(1)(b) of the said Act. Reproduced herewith are some of the said statements contained in the said book. *Son of India* referring to the personal character and conduct of Mrs. Manisha Gaudilo are as follows:

- (a) That Mrs. Manisha Gaudilo visited her marriage to the late Sanyu Gaudilo and made of everything herself.
- (b) She is spending so much money on herself and her various schemes. "What does all this money come from?" The marriage is that the petitioner is possessed of wealth corruptly made which is now being spent.
- (c) That she moved her marriage to increase her influence and create wealth.
- (d) That her marriage life was not of success because with her husband.
- (e) That due to her foolish action, her husband became more and more unhappy. It



it as a result of domestic violence perpetrated by her then-husband. Gasselle believes her husband was lying. He lying in the place which ultimately resulted and in which he died as a direct result of his misconduct.

(b) That she was totally entangled in her husband's death.

(c) That she left her mother-in-law's house because she was afraid of her husband's death.

(d) That she had no love for her husband and she should be allowed to travel.

Why the High Court told distinguished facts and particulars are absent and had not decided cases of abuse?

36 The High Court cleared its doubt —

In this case, the learned respondent has also referred to the statements that the said statements were erroneously obtained to persuade the progress of the petitioner's election. Similarly, he refers to statements (b) contained in the paragraph wherein an observation is made that the respondent is that the petitioner is possessed of wealth illegally made. The contention is that these statements would apply to Sen. Michael Gasselle personally as if she was the petitioner and not to Ch. Julius Nwando the present petitioner. Ch. Julius Nwando was not possessing the election, he was only a voter. The statements that the petitioner's election were calculated to be prejudicial or that the petitioner was possessed of wealth illegally made" was clearly applicable to the petitioner Ch. Julius Nwando and could certainly apply to Sen. Michael Gasselle. It is, therefore, urged that this pleading error made by the petitioner himself and the other parties he lacked due diligence the error the petitioner has applied the statements to the person so mentioned the statements were introduced to persuade the leader of the petitioner's political party and that regarding possession of wealth, is related to the leader of the petitioner's political party namely Sen. Michael Gasselle. It appears to me that, as pointed out by the learned counsel for the respondent, the proposed amendment changes the entire intent of the pleading in the paragraph and is not merely a clerical mistake. It is an interference of the fact that the pleading has been made without an application of mind and it seems to me that it

is not by one of the principles set forth in Section 54(1) of the Act for which an amendment must not be allowed. I am not satisfied that the proposed amendment could fairly be allowed therefore, must fail. On a consideration of all the matters, I would hold that the pleading in the paragraph is not reasonable unless there lack of material facts as a result of non application of mind of the petitioner himself and a conclusion."

Whether the High Court was right in taking the amended case —

37 There is no agreement to show that the petitioner was made with the knowledge or content of the returned candidate when the book was published in June 1992. In fact, in 1992 there was no question of having an election in anticipation of the future elections of 1993 and in anticipation of the respondent contesting the same. In the election process even the offending paragraph has not been quoted. The petitioner has set out in paragraph 16 to 21 the references drawn by him in the report according to him. This apart, the issue delicately arises in the following manner: The source of the things is that the book containing alleged defamatory material was distributed with the consent of the respondent. Does it meanly mean that even though it had written is not made as to

(i) when the returned candidate 'gave consent

(a) in what manner and how and

(ii) when and in what premises the consent was given.

To distribute these books in the constituency. How does a constituency material particular in so as which locality it was distributed or to whom it was distributed, or in what form it was distributed. But let us say facts mentioned which relate to their face value would show that there was consent on the part of the returned candidate. Under the constitution it is difficult to comprehend how consents can be taken to the vote taken by the High Court.

#### GROUND XIV

38 Alleged corrupt practice is incorporated in ground. The XIV reads thus —

Then during the same campaign in the Amroli constituency, another incident is linked with the photograph of the respondent on the cover page, under the title: *Raju Kiyan* (Why Raju) propaganda is written by one English friend. She is distressed in fact by the respondent, his election agent and a huge number of other persons with the consent of the respondent and his election agent. On the third page of the said pamphlet occurs the following statement:

Amroli is the place where Raju's younger brother did his principal work. If Amroli was as friendly with the justice office like Sanyu Gandhi, why would he not run as a candidate in Amroli? Why would she not serve the hapless poor and why would she not employ her real power to help the hundreds of thousands of people in rural cooperative work. The anti-cooperative and non-cooperative elements who had passed the hands of Sanyu Gandhi and Manika Jafar and the main foreign service disappointments and enemies of the country who got Manika out of her family home, let her wander in mad houses, jails, or Mooristan and swing her in those coils. These people including the politicians (not merely the leaders of the parties) but the whole family, not only the partners of Amroli and the family but also the partners of the property partners of the country. The very people who were working for Amroli in India, who were Khadiwan and the very persons who are taking part in the progress of Amroli and against the justice of Sanyu Gandhi to be in the company of the country situation because no lady, of India can serve as daughter or daughter-in-law and the widow of an Indian man to go abroad before she is required, the a of which demands about her late husband's property. She is continuing her politics in her home. She is always her mother-in-law and her brother-in-law. Having her children's family she is now doing her duty and (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) (32) (33) (34) (35) (36) (37) (38) (39) (40) (41) (42) (43) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54) (55) (56) (57) (58) (59) (60) (61) (62) (63) (64) (65) (66) (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) (78) (79) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (100) (101) (102) (103) (104) (105) (106) (107) (108) (109) (110) (111) (112) (113) (114) (115) (116) (117) (118) (119) (120) (121) (122) (123) (124) (125) (126) (127) (128) (129) (130) (131) (132) (133) (134) (135) (136) (137) (138) (139) (140) (141) (142) (143) (144) (145) (146) (147) (148) (149) (150) (151) (152) (153) (154) (155) (156) (157) (158) (159) (160) (161) (162) (163) (164) (165) (166) (167) (168) (169) (170) (171) (172) (173) (174) (175) 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specifically set out "a definite field" in which the duty of the petitioner to publish his choice within particular persons, with whose contacts the respondents made no disturbance. According to the petition, only one pamphlet was actually in the respondent's but by one Joseph Fyath. The petitioner instead of propagating his particular person who distributed the booklet or with whose contacts, it is distributed made a formal and vague statement that it was done by the respondent, his election agent, a large number of other persons with his consent and/or with the consent of his election agent. The duty was therefore of distribution, dissemination, the agents or persons who distributed it, but, not been indicated and therefore, the pleading is vague and cannot be sustained.

Whether the High Court was right in making the affidavit valid -

34. On a view of the documents made in the election petition, it is evident that it is not pleaded as to who had distributed the pamphlets, when they were distributed, where they were distributed or by whom they were distributed or where persons they were distributed to. Pleading is accordingly silent on these aspects. It has not even been pleaded that any particular person with the consent of the respondent, or his election agent (claimant) did send pamphlets. The fact it has been stated by the learned counsel for the respondents that no election agent had been appointed by the respondent during the election election.

35. The pleading in election does not spell out the exact of action. So also on account of the failure to mention the material facts, the Court could not have permitted the election petitioner to adduce evidence on this point. It would therefore appear the election had done as Nnaman's case (affirmed SCC 101) and Carr would be nothing for the respondent to answer.

#### Ground No. XV

36. Alleged corrupt practice as contemplated in ground No. XV reads as under -

That during the course of the campaign the respondent, his election agent and his party brought into existence a propaganda committee to further the purpose of the respondent's election. This committee was

called the Anambra Manifesto Committee. Through its agency the Committee, the respondent, his election agent and others with their consent and knowledge caused another pamphlet to be printed, published and circulated during the election campaign under the title "How do legislators prosper their?" who is an affidavit in the petition of Anambra. The said pamphlet into the contents the following sentence -

"That Monica Goodell is a corrupted and by all means elements. She was also seen in the company of members. Her whole campaign is based on money. In my view, Monica seems to have a high head with the face of Papias. Monica has no more of her own if she had anything in her, it would have gone out before her marriage to Joseph. If she had any claim for leadership or service of the country, she would have compromised with her husband Papias as he has a person of pleasure (Shakaya Dhanu). Therefore she is conducting her politics on the strength of people like Papias and Monica's son. A woman who could not protect the honour of a vast money like India. Monica is the destroyer of the country."

The petitioner says that the exact content of the pamphlet and the propaganda conducted on the basis thereof was never submitted in the personal character of a candidate. Each of these statements is false to the knowledge of the respondent and when the proper publication and circulation of the said pamphlet and the propaganda based thereon was in my view, done by the agent of the respondent and a dissemination of the election of the respondent. These statements are in relation to the personal character or conduct of a candidate and they are in relation to her conduct. These statements were reasonably calculated to prejudice the prospects of the petitioner's election. The election of the respondent is then held to be declared void under section 101(1)(c). This was also liable to be void made under the 100(1)(3)(a) inasmuch as, the result of the election is so far as it concerned the electoral candidate has been unlawfully affected by the said corrupt practice.

In this pamphlet, the name Joseph Fyath who is referred to in the pamphlet in the preceding paragraphs is one of the

controversies and in their conduct etc. he has referred to his publications mentioned in the personal paragraph.

Why the High Court held that material facts and particulars are shown and not not-shown is a case of course.<sup>2</sup>

#### IV The High Court observed —

The petitioner has an own specific statement from the pamphlet content to address on the character and conduct of Sir, Mervyn Gifford where, inter alia, her association with lawyers and other persons of questionable antecedents was set out. It has been mentioned these statements were false to the knowledge of the respondent and others and the pamphlet was distributed by the agents of the respondent in the process of the election of the respondent and that the result, so far as the respondent is concerned, has been materially affected by the corrupt practice. Here also, the petitioner has made an implied statement of the printing, publication and circulation of the pamphlet by the respondent for election agent and others with their consent and knowledge without trying to pass on the particular person who had done so. The place, date when the pamphlet were distributed have also not been disclosed. It was necessary for the petitioner to do under the law as set out above. The pleading is therefore vague embarrassing and fails in material facts and therefore must fail. The petitioner's prayer for an amendment to show the proposed to file a copy of the pamphlet is allowed as it is evidence and not integral part of the process.

Whether the High Court was right in taking the amendment was?

36 In view of the decision law given in *Mohd. Saif v. Govt* (1975) 1 SCC 201, appeal as early as in 1975, the High Court was perfectly justified in taking the view that no case of not-shown was made out. For in the absence of material particulars as to who had printed, published or circulated the pamphlet, when, where and how it was circulated and which facts need to indicate the respondent's consent, his actual distribution, the pleading could not disclose a case of action. There would be nothing left for the respondent to answer and the matter would fail unless the document had been in *Mohd. Saif's* case (supra). The learned counsel for the applicant is unable to show

how the Court has committed any error in reaching the conclusion.

37 That there is no substance in the contention urged for the learned counsel for the applicant in order to avoid the judgment of the High Court in the course of the seven charges of alleged corrupt practices, where the learned counsel started to call material in support of his submissions.

#### Learn submissions ground (3) urged

38 Counsel for the applicant has taken exception to the fact that the High Court has demanded the election petition in violation of powers under Order 7 Rule 11 of the Code of Civil Procedure notwithstanding the fact that under the said provision if the petition does not disclose a case of action it can only be rejected (and not dismissed). The contention urged by the learned counsel would have had some significance if the respondent under was passed before the expiry of the period of limitation for entering the election petition. In the present case the election petition was filed on the last day on which the election petition could have been presented having regard to the rigid period of limitation prescribed by Sec. 16 of the Act. It could not have been presented even on the next day. Such being the situated position, it would make little difference whether the High Court used the expression rejected or dismissed. It would have had some significance if the petition was rejected (instead of being dismissed) before the expiry of the limitation period, as a fresh petition which contained material facts and which complied with the requirements of law, and which disclosed a case of action could have been presented within the period of limitation. In that backdrop the High Court was perfectly justified in dismissing the petition. And it makes no difference whether the respondent implored a dismissal or rejection for nothing turns on whether the learned respondent employed or the issue. There is thus no valid ground to interfere with the order passed by the High Court, and the appeal must accordingly fail.

39 But before the last word is said one more word needs to be said. The expression corrupt practice employed in the Act would appear to be rather imprecise and offensive. One is perhaps reminded by a revised and insufficient expression such as 'disapproved'



Coal Control Order 1971. Clause 4 of the Order provides that no person shall import, transport, carry, or transship a Coal Agent or a Coal Depot Holder or his agent, his wife, child or spouse under and in accordance with the terms and conditions of a license issued under this Order. Under the provisions of the Order, the license holder is required to furnish an affidavit in court and also for securing a brick kiln with coal. Clause 6 provides that the license shall be valid up to 31st March next following the date on which it is issued and may be renewed from year to year for a maximum period of three years. This clause also provides for fee that an applicant for the license is required to pay. For renewal under the Order, the fee is Rs. 100. There is a further fee also prescribed for the clause that licensee does not pay Rs. 100 in any case. Under cl. 7 a Coal Agent is required to file returns for the year of 1970-71, which a Coal Depot Holder is required to furnish quarterly in the case of Rs. 200. Rs. 100 in the amount of security bond in respect of brick kiln. Clause 8 requires the licensee to sign a full copy of the coal allotted to him unless he is provided by sufficient stock in the warehouse of the District Magistrate. This clause also requires the licensee to comply with any direction that may be issued to him from time to time by the State Coal Commission or the District Magistrate in regard to import, purchase, sale, storage or distribution of coal or for securing a brick kiln with coal and sale and distribution of bricks, as applicable to him. Under sub-cl. (c) of 8 the Coal Agent is required not to sell at a rate higher than those fixed from time to time by the District Magistrate. Clause 11 enables power upon the State Coal Commission or Licensing Authority or any Inspector with a view to securing compliance with the order or order upon and accept any promise or threat to him reason to believe that coal has been or is being or is likely to be removed or transported. It also enables power to seize coal and records pertaining to the licensee. Clause 13 prescribes the penalties which may be imposed in the event of the licensee comply with the provisions of the Order. It states that the default may be punished under the

provisions of the Essential Commodities Act 1955. It provides that the U. P. Coal Control Order 1971 was issued at a time when there was shortage of coal and it was felt necessary to regulate its distribution and supply in a fair and proper manner. As and when the shortage eased, the State Government issued orders from time to time. Also a later in District Administration required the storage of coal and also the price of coal. At one stage, the price of bricks linked to cost plus margin by fixed under the provisions of the Order. Through Government Order D-1732 HM control over the price of bricks linked by cost through by law was abolished. Price control over black coal through by law was also abolished. It appears that the supply position of coal stated and thereafter first sale coal was available. Transport of coal was allowed by road whether a way to available the consumers was doing so their requirements without any difficulty. Since transport charges for coal were not uniform, it was found difficult to fix price of coal or of the bricks linked by them. Therefore, the Government did not fix any price order for coal or for the bricks linked by coal. This was done by the Government Order No. 281/77 Am-73 dated 23.11.77. It appears that although coal was available for bricks and there was no special arrangement in respect of coal in respect of bricks linked by them, the District Magistrate continued to make mention and issuing coal and issuing provisions. This caused dissatisfaction amongst the brick kiln owners. The State Government therefore revised the order D-1732 referred to herein above. Through this order it was specifically provided that except the licensing Cls 4 to 7 of the Coal Control Order 1971, all its provisions of the said Order shall be kept in abeyance. The consequence of keeping these clauses in abeyance was also indicated in the Order. It was provided that no action, except that contemplated by Cls 4 to 7, shall be taken under the provisions of the Order or of the Essential Commodities Act 1955. From the Order it appears that the Government did not suppress the rules and regulations, which were prepared by the District Administration for checking quantity of coal stored by Coal Depot Holders or brick kiln owners. A clarification of the Government Order D-1732 was made by G.O. No. 44/78 Am-73 dated 9.2.78.



record in all these six years previous to 1951. A similar correspondence and a statement in writing to the use of the stated papers are signed that the Government in the Patta Form No. 407 of 1951 would also provide the Patta Form No. 408 of 1951 to RPF of 1951. The are accordingly during the facts of the Patta Form No. 407 of 1951 and in 1951 decide the controversy involved in all these cases in the light of Government order after the case.

3. Prameswar Mondal was granted plot No. 314 (part) (A) approximately in village Malia Raza, Pargana Rajp, District Jalpaigai in pursuance of the provisions contained in S. P. Bhattacharya Vigna Act 1951 on 3-12-1951. He claims that after obtaining the plot, he came and settled on the said plot and as the contention he also received assistance from the State Government. On 19-3-1954 he received a notice purporting to order S. 11A of the S. P. Bhattacharya Vigna Act 1951 from the Additional Collector (Crops) District Jalpaigai regarding failure to show cause why the settlement of plot No. 314 made in his favour in the year 1951 be not cancelled for following two reasons :-

1. The petitioner was not a landless agricultural labourer and

2. The petitioner was not a resident of village Jalpaigai.

In response to the said notice the petitioner filed objections before the Additional Collector and contended that the above cause notice issued to him was invalid. He also questioned the right of the Additional Collector to cancel the settlement and contended that he was a resident of Bhakadpura and was as shown when the plot was allotted to him, landless agricultural labourer. The Additional Collector ruled that under S. 11A of 1951, rejected the objections filed by the petitioner and directed that the Patta issued in his favour on 3-12-1951 be cancelled. He also directed the Tahsildar to make necessary corrections in the revenue records. Aggrieved the petitioner has approached the Court for relief under Art. 226 of the Constitution.

3. State of Uttar Pradesh enacted the Uttar Pradesh Bhattacharya Vigna Act 1950 (U. P. Act 15 of 1950) which was brought into force with effect from 1-3-1951. The Act provided for donation of land to the Bhattacharya Vigna and for the construction of a Committee constituted

with the right to determine and manage all such land. Sec. 14 of the Act enabled the Committee on such authority, or the person as the Committee, with the approval of the State Government may specify either generally or in respect of any area or in the manner prescribed grant land which under the provisions of the Act remains. The Act was Amended by U. P. Act 3 of 1954 with effect from 21-1-1954. The amending Act amended the provisions of S. 14 of the principal Act. The provision contained in S. 14 with regard to grant of land being made to landless persons was altered and a provision was made that the grant under the Act can only be made in the favour of a landless agricultural labourer. The amending Act further inserted a new S. 11A in the principal Act vesting the Collector to use his own opinion or on the report of the Committee on the application of any person aggrieved by the grant of any land made under S. 14 whether before or after commencement of Uttar Pradesh Bhattacharya Vigna (Amendment) Act 1954 require one such grant and no if he felt satisfied that the grant was regular or was obtained by the grantee through misrepresentation or fraud cancel the same from among under section S. 11A. But the power was vested by the Additional Collector (Crops) on 19-3-1954 regarding the petitioner to show cause why the settlement of plot made in his favour is not cancelled for the two reasons indicated above.

4. A perusal of S. 11A clearly indicates that the Collector has been empowered to cancel settlement under the Bhattacharya Vigna Act made with any person both before and after the amending Act came into force in the year 1954 on following two conditions :-

1. The grant was irregular

2. The granted land obtained by person having fraud or misrepresentation.

In the instant case it is not the case of the respondents that the grant was being sought to be cancelled either on the ground of fraud or of misrepresentation. Their case is that grant made to petitioner in favour is being cancelled because in the opinion of the respondents it was irregular. According to the respondents under the Act, no grant could be made in favour of the petitioner as he was neither a landless agricultural labourer nor was he a resident of village Jalpaigai.



3. In order to find whether a particular land is, in favour of a person under the provisions of *Rohtas Pargana Act*, consolidation was the principle to be applied at the time of making of the grant here up to 1947-48. In the instant case the grant was made after year 1946 prior to the constitution of U.P. *Rohtas Act* in the year 1975 (Sec. 14 of the *Act*). It is stated in the year 1946 that the *Commissioner* to verify the land obtained evidence from the landless persons. Another specific fact with Indian origin had also to be agricultural labourers as they had to be made part of the grant in which the concerned land was located. Case of the petitioner in the instant case prior year 1946 he had no land at his name and was merely a landless person and the settlement made on him was quite legal. The stand taken by the respondents at para 5 of the counter affidavit is that the petitioner had obtained the grant by making misrepresentation and procuring land claim by claiming to be landless person whereas in fact was not such a person residing at the same locality. Further in the affidavit the petitioner further stated that he was a landless person not that he produce any evidence in support of the claim made by him. This stand taken by the respondents in their counter affidavit cannot be accepted. A perusal of the counter copy which has been filed as Annexure I to the writ petition shows that the above stand taken was based on the petitioner not for the reason that he was a landless person but because he was not even for a landless agricultural labourer. There fore he landless person without his being a landless agricultural labourer. Moreover the order passed by the Additional Collector (Ludhiana) dated 23-9-1975 whereby he rejected petitioner's objection maintains that the petitioner did not succeed before him that he was a landless person, but that the Additional Collector proceeded to reject petitioner's objection merely on the ground that he did not submit any proof in support of his claim. The order does not indicate that there was any mistake before the Additional Collector (Ludhiana) to indicate that the petitioner was, at the time when the plot was initial with him, not even a landless person. The purport of Sec. 14 of the *Act* as it stood at the relevant time, that from the year 1946 onwards it all depended whether a landless person claiming

settlement of plot was also an agricultural labourer. At that time the section also did not imply any such qualification that the landless person to whom the land could be granted must be resident of the district in which the land was located. In this view of the matter it is evident that there was absolutely no material on the record which could lead any one to infer that the petitioner had obtained being justly entitled or if supporting the facts. The two grounds mentioned in the above case are not only also not relevant to the question whether the settlement made in favour of the petitioner in the year 1946 was or was not regular. The question arising for the petitioner is how exactly the plots obtained in his favour in the year 1946 be not cancelled for the reasons stated above as also the above proceedings following thereon stand regular. The order D/ 124-1975 cancelling the plots obtained in favour of the petitioner in the year 1946 on the two grounds stated in the above case cannot be thus held to be quashed.

4. In the result, the petition succeeds and is allowed with costs. The order D/ 124-1975 is quashed. Stay order D/ 284-1975 is vacated.

Person allowed

1986 ALL. L. J. 647

B. L. YADAV J.

Atwar Singh and another Respondents v. Assistant Director of Consolidation (Chandigarh) and others, Respondents

Constitution Bench. Para. 16 of 1980 of 1980 D/ 284-1975

U.P. Consolidation of Holdings Act (3 of 1954), S. 13 - Proceedings under - *Rohtas Pargana* meaning will in favour of holder - Only right of limited owner conditioned - When cannot transfer his right by will - A case that even though a holder retains right of *Rohtas Pargana* or the acquire *Rohtas Pargana* right, the can make the transfer. But in case any right of transfer have been restricted by a will executed under a law before the said be having no better right than conferred on her by the will. There is no other right of the

CD-10-1980/10-1980

matter which either by a will or by the formal provisions or otherwise can be controlled or excluded in advance. Even the stranger can be made heir of the first male issue of the testator and the other heirs who would have been excluded either under the personal law or under the Testacy Law, or as provided under § 171 of the L.P.F.A. and § 3, Act no. 5. In spite of L.P. Testacy, Act. can be defeated by making a will. (Para 11-12)

1964, on facts that the testator had executed a will and in favour of himself and the later acquired, only the right of himself or even as provided in default and hence the law no right to disavow the will on 10-4-76 in favour of the petitioner and after her death her daughter became her heir. (Para 13)

Cases Referred	Chronological Form	
1973 All LJ 399	1970 Rev Dec 44	17
AJS 1965 94 498		11
AJS 1960 43 1196		11

*Valencia, Salas for Petitioner, Saurade Counsel for Respondent*

**ORDER** – The parties under Act 126 of the Consolidation submitted against the order of 18-10-68 passed by the Hon. District of Consolidation allowing the petition filed by respondents 4 and 7 in proceedings under § 12 of the L.P. Consolidation of Holdings Act 1918 (the Act).

2. The facts leading to the present petition are that Chak No 300 was recorded in the name of Smt. Gita, widow of Chitakhari. An objection under § 12 of the Act was filed by Smt. Sagar and Smt. Ramesh respondents and 7 alleging that they are daughters of Smt. Gita and Chitakhari and the latter has executed a will dated 18th Aug. 1971 in favour of Smt. Gita, the own mother of the objection and it was given only a life tenure, hence the said rights to succeed the will in 10-4-76 in favour of the petitioner. It was further alleged that the testate will was illegal and thus would not be given effect to in the relevant papers rather their names than be entered as themselves in the name of their mother.

3. The petitioners filed an objection denying the claim of respondents 4 and 7 alleging that Smt. Gita had executed a will on 10-4-76 in their favour hence their names than be entered as themselves and the objection of respondents 4 and 7 is devoid of any substance.

4. The Consolidation Officers held that Smt. Chitakhari had no right to execute the will in 10-4-76 hence the petitioners who are entitled to be entered in place of deceased mother only, respondents 4 and 7 are entitled to be entered in place of a person after the death of their mother. The appeal filed by the petitioners was allowed. Therefore the petition filed by respondents 4 and 7 was allowed and their names were ordered to be entered in place of their Gita their mother. Against the order the present petition has been filed.

5. In 18-10-68 appearing for the petitioners urged that the original will executed by Smt. Chitakhari in 10-4-76 in favour of the petitioner was legal and valid and Chitakhari had no right to execute the will on 10-4-76 conferring only limited rights on Smt. Gita, that she had acquired full legal rights under the will and was empowered to execute the subsequent will in 10-4-76 in favour of the petitioner and it was held that not the substance hence respondents 4 and 7 could not get any right.

6. On 18-10-68 appearing for the petitioners urged that Chitakhari had executed the will in favour of Smt. Gita who was conferring only limited rights on a life tenure and she was not given any right to execute any will hence the will in favour of the petitioner was illegal.

7. In this case the principal question for consideration was as to whether the will in 10-4-76 executed by Chitakhari in favour of his wife Smt. Gita was valid? Chitakhari being Chitakhari has testamentary rights, and he executed the will in favour of his widow conferring rights of a limited owner to the effect that she might not execute any further will during her life and after her death the plot may be inherited by her daughter Smt. Ramesh and Smt. Sagar respondents 4 and 7. In these circumstances the intention of the testator is paramount. The will imports principle of construction of a will, i.e. that the Court must assume that in the execution of the testator. Applying this principle Chitakhari would have considered that it was his widow Smt. Gita was given absolute rights and might execute some will in the said deed and that despite her daughters being otherwise. The substance accordingly imposed in the will executed by her appears



1984 A.L.J. 1, 1-608

A. N. DASGUPTA

*Barneth Chaudhri Aggravated, Petitioner v. Dal Adli District Judge, Ghazipur and others, Respondents.*

Civil Appeal No. 999 of 1980 (D. N. T. 1981).

**1. F. Urban Buildings (Regulation of Letting, Rent and Repairs) Act, 1948 (1949), ss. 25, 40 = Application by tenant claiming benefit under — Applications filed 8 years after expiry rate levels of the said Act = Order in favor of petitioner was sought to be cancelled in proceedings of S. 1 of Criminal Act = It would be contrary to the intention of legislature in enacting such law by making recourse to provisions of S. 1 of Criminal Act (Lustrous Act/31-19-1948) S. 8.**

(Para 4)

**B. K. Dal (Petitioner) v. A. Sengupta (Respondent) for Respondent.**

**ORDER.** — The petition was presented under Art. 226 of the Constitution has been filed by the petitioner for quashing the order dt. 15-10-1980 passed by B. K. Dal District Judge, Ghazipur and the order dt. 20-10-1979 passed by District Commissioner, Ghazipur (Lustrous No. 2 and 1 respectively to the Writ Petition).

**2. Briefly stated the facts are as under:** The petitioner was a tenant of the premises in dispute which is owned by respondent 1. A suit was filed for the eviction of the petitioner by the father of respondent 2 prior to the commencement of the Act of 1948 on the allegation that L. P. Dal No. 13 of 1947 was not applicable to the building. A notice of demand and repossessing the tenancy was served upon the petitioner and on the failure of the petitioner to comply with the requirement of the notice a suit was filed for eviction and recovery of amount of rent. The suit was contested by the petitioner. The trial Court decreed the suit. Aggrieved by the judgment and order passed by respondent 2 desirous of setting aside the decision was preferred in the Court of District Judge which was

transferred to the Court of B. K. Dal District Judge, Ghazipur by deposit and filing in law. The appeal was also dismissed. Further aggrieved by the said judgments and order of setting aside the previous orders passed under Art. 226 of the Constitution has been filed against the said judgments in a petition moved by respondent 1 and I respectively.

**3. Counsel for the petitioner has taken a largely Counsel for the respondent submitted that respondent has deposed the fact upon which the order under S. 40 of T. P. Act was not passed on the premises. Further the notice was not served on the Court. These contents in the petition. In the petition the notice statement was filed by the petitioner and in para 5 it has been clearly stated that the notice was served on the petitioner. It has further been stated that a formal notice has been communicated the notice case as there was no evidence of formal proof of notice and hence notice had been served on the petitioner with through a law officer is deposed that the misapprehension of evidence would only be confined to be a finding of fact regarding no evidence. As the facts shown above the notice was served on the petitioner. Moreover, the notice was properly served and the respondent 1 had proved the signature of his father and under the writ the notice of the notice and as such a notice is not that there was no evidence on record. The statement for the petitioner then signed but in the statement the contract of tenancy was not proved between the parties. Annexure B is the notice given to the tenant which clearly shows that there was concluded contract of tenancy and as such the submission being not proved disposes in his report. Lastly, the tenant for the petitioner submitted that the Court as well as the respondent Court acted in not giving the prosecution provided to the petitioner as contemplated under Ss. 70 and 40 of the Act No. 13 of 1947. In the main case it is admitted that on the date of the commencement Act 13 of 1947 the suit was pending. It would be suggested to suggest that the provisions of Ss. 70 and 40 of the Act apply only of the order which are signed of both 1 —**

**4. Pending suit for eviction relating to building brought under regulation for the first time — In my view the contract of a lease from my building so which is not a**

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did not apply, pending on the date of commencement of this Act when the house within one month from such date of commencement or from the date of his knowledge of the pendency of the suit whether in fact or deputation the court below which the suit is pending, the compensation of rent and damages for suit and occupation (such damages for suit and occupation being calculated at the same rate as rent) together with interest thereon at the rate of four per cent per annum and the landlord's share of the rent, as above then in force shall be paid except on day of the ground mentioned in the ground to relieve (a) or (b) (b) (c) of notice. Clauses 1-20 articles parties shall be entitled to make necessary amendments in their pleadings and to adduce additional evidence when necessary.

Provided that a tenant who may pay the whole dues not exceed twenty five rupees, may sue for deposit and interest as aforesaid.

4) Pending appeals or suits for revision relating to judgments through order of appeal for the first time. 4) In an appeal or revision arising out of a suit for recovery of a sum from any building wherein the defendant did not apply regarding the date of commencement of this Act, it shall be deemed as a condition with the provisions of 1-20 which shall mean the date of appeal.

1. Section 16 provides for provision being passed when the suit is pending while 1-40 provides for such benefit in a suit of revision or appeal pending. The statutory requirement of the said provision is that the benefit can be given to a person who files an application within the time frame provided in 1-20 days. Admittedly no application was filed under 1-20 at the said Act in the year which was pending when the Act came into force. The court for the petitioner has submitted that an application was filed under 1-40 after the National Court. The suit was allowed as early as 20-10-1970 and in short after the provision of the said Act. The provision of the petitioner is that the date in filing the application was later in the standard in 1-1 of the Limitation Act would enable them to claim compensation of the sum and the respondent 1 and 2 in replying the application without applying the provision of

1-1 of the Limitation Act. The provision is a fully unconditional and clearly unconditional and it is such because to be required in the case of the petitioner the application for claiming the benefit of 1-40 was filed though after a lapse of about 10 years of the commencement of Act 10-10-1970 and thereby the respondent was not to be considered as per the provision of 1-1 of the Indian Limitation Act. The period provided for claiming the benefit under the provision of 1-24 according to 1-40 of the said Act is only 30 days during which period the person might be denied may dispose the entire amount of money including damages and interest thereon. It would be contrary to the intention of the Legislature to not such one by seeking recovery to the provision of 1-1 of the Limitation Act. However it may be said that there is nothing on record to show that any amount was deposited. In view of the above facts, there is a question for trial that respondent 1 and 2 have submitted any document to it to enable the petitioner to claim compensation under Act 10-10-1970. The petition has no basis and should not be allowed.

2. In the result the petition fails and is hereby dismissed with costs.

Prayer dismissed.

1984 ALL J. 1 401

—AIR 1984 Supreme Court 307

(From Gujarat)

AMARDEOLA BATH SEN AND  
KANGARATHI MEHRA, JJ.

Criminal Appeal No. 117 of 1973 D. 48-9  
(1983)

Salimkhan Salimkhan Appellant v. State  
of Gujarat Respondent.

Criminal P. C. 13 of 1914, S. 106. —  
Provision of Compensation Act 12 of 1971,  
Ss. 10(1)(a) and 10(b). — Trial of police constable  
for accepting bribe. — Trial Court accepting  
evidence without that necessary steps were  
taken as required without for knowledge  
— High Court rejecting evidence and  
reversing appeal. — Held, on facts proved

\*Criminal Appeal No. 12 of 1973 D. 4-7 1975  
(1975)

ACB/PS/MS/0073

was illegal. Criminal Appeal No. 11 of 1975, Dr. 8-7 1975 (Capp. Reversed).

The second appellant was a police constable. He was cited for accepting a bribe of Rs. 50/- from a taxi driver for allowing him to park his car near S. T. bus stand which was open as prohibited. The trial Court accepted the defence that the currency notes had been stolen, it was the pocket of the accused and accepted him. The High Court taking into consideration that 30 years' service of the accused as a police constable did not bring the defence story, and no credit for accused.

Held, that the High Court obviously lost sight of the fact that the appellant may have lost his salary, and in the possible consequence the notes could have been stolen without the appellant knowing it. There was also evidence that the accused's finger prints were dipped in marks did not turn out. The evidence which had been accepted by the trial court, prohibiting the defence plea that the currency notes had been received by the appellant in his left hand and therefore the retention of the notes into the pocket of the appellant by some other person was more probable. This is the defence plea which had been accepted by the trial Court. Consequently reversed by the High Court was pronounced Criminal Appeal No. 11 of 1975, Dr. 8-7 1975 (Capp. Reversed). (Para. 1-4)

Mrs. Mead Saria, Advocate, for Appellant No. 5 J. Shobika Dr. Adnan, No. R. N. Poddar, Adv. were with him for Reversal.

**REMARKS** — The appeal by special leave is directed against the judgment of the Orissa High Court reversing the acquittal of the appellant. The appellant was cited for offences punishable under S. 144 of the Indian Penal Code and S. 113(d) read with S. 101 of Act No. 2 of 1947 on the allegation of having stolen Rs. 40/- in bribe.

3. The appellant was a police constable and at the relevant time, on 20.11.73, he was posted as S. T. Bus Stand at Bhubaneswar. P. W. 1 the informant was playing a game and wants the help of parking the car by the side of the bus stand where such parking was prohibited. It is the prosecution case that P. W. 1 used to pay Rs. 5/- per month to the appellant as a security given for not processing him for such illegal parking. It is the further case of the

prosecution that a few days before 29.11.73, the appellant paid the informant that he should pay him appellant a sum of Rs. 50/- representing the payment for a whole unit at Rs. 5/- per month, as he was in need of money, and it was finally noted that if the amount was paid in lump the informant would get a unit of Rs. 50/- and he would have to pay Rs. 20/- only. On the understanding made by P. W. 1 on the last conversation, a sum of Rs. 50/- (Rupees 50/- only) notes were handed over by appellant in powder and made over to P. W. 1 to be paid as bribe. P. W. 2 the Inspector supervised the map. P. Ws. 1 and 2 were called as Bhubaneswar. At about 8 in the morning on 29.11.73 P. W. 1 met the appellant near Bhubaneswar. P. W. 4 and his companions remained in a distance of about 100 feet. P. Ws. 1 and 2 went into the forest along with the appellant. According to P. W. 1 he took out the five 10 rupee currency notes and paid them to the appellant who received the notes in his left hand and put them into the right pocket of his khaki shirt. Thereupon, as previously arranged, P. W. 1 placed a stick in front of him for police. At this stage, P. W. 4 and others came up to the appellant and received the money. It is said that the currency notes were dipped into the account of Goddard Chatterjee and the same turned rosy in colour. Similarly the pocket of the shirt and the bag of the appellant were put to test and these too turned rosy.

4. The defence was a total denial of the bribe having been accepted and taken. The appellant stated under S. 113-Ca P. C. that at about 9.30 A.M. when I was waiting my duty in the forest Bhubaneswar I came in the forest and saw by my side. Bhang then asked whether I knew the death of Jiji mother. I told him that I do not know anything about it though I had gone to the hospital to see my the mother. Then he took me and got up. Then Madhukar Sahas, Pradi Sahas and Monary came there, when I was standing up next to the bus stand door on Panchgiri station from, after Madhukar Sahas asked me to take out three notes but I refused to do so and therefore, Mr. Pradi took out three notes and counted.

4. On behalf of the appellant, it had been contended before the trial Court that P. Ws. 3 and 4 the Panch witnesses were associated in P. W. 1 and P. W. 1 was previously working in

the police justified their nationalised behaviour. It is one aspect of the unreasonable that these findings were not reliable. The learned trial judge did not believe the prosecution evidence regarding acceptance of the £40 by the appellant and accepted the defence stated that the currency notes had been inserted in P.N. 1 into the pocket of the appellant. The entire evidence had been taken into account by the learned trial judge in reaching his conclusion and he accepted the evidence of both the parties involved against him.

6. The judgment of acquittal was accepted by the State in appeal before the High Court. Dealing with the question as to whether the currency notes could have been inserted into the appellant's pocket, the High Court observed: "On our part, we find it extremely difficult to accept this version. The respondent was a policeman who was about to retire in a short time. He had been in service for more than 30 years. Even if one is naturally sceptical, it is not possible to believe that a policeman would not come to know of some one sitting at a distance of 6-7 meters currency notes in his left hand-side pocket. To us it appears that such a firm version be advanced, if it was accepted, the respondent would have come to know about it. The trial Court had accepted the defence plea of possibility of insertion of the currency notes without the appellant knowing about it. The High Court reversed the trial Court on the ground by words drawing a presumption on the basis of the appellant having been a policeman. The appellant was already serving the Age of representation as fixed by the High Court and had been more than 30 years in service. (The High Court obviously lost sight of the fact that the appellant may have lost his sight, and as for peculiar circumstances relating about the spots equal have been inserted without the appellant knowing it. "Yes, older people who are young and able are often mistaken for people pockets and only when their relations have been lost the fact is noticed by them. The previous facts in the currency case, instead of the pocket being picked, currency notes have been inserted into it. The view of the trial Court should not have been discarded solely on the basis of what has been attracted by, as shown from the judgment of the High Court.

maintained in P.N. 1 was not been conclusively established by the High Court on the conclusion of the trial Court has been disturbed. P.N. 1 was ultimately present at the spot and he has consciously spoken that when the appellant's fingers were put into the money slot, did not take any. The trial Court had ordered to search him and allow open it. Thus evidence which had been accepted, notwithstanding the defence plea that the currency notes had not been inserted in the appellant's left hand and therefore, the insertion of the notes into the pocket of the appellant by some other person was more probable. This is the defence plea which had been accepted by the trial Court. We are inclined to think that reversal by the High Court was not warranted.

7. We accordingly allow the appeal on this the judgment of the High Court and restore the judgment of acquittal passed by the trial Court. The last benefit of the appellant are discharged.

8. The appellant was serving as a constable and was due to retire on 10-5-1975. There is no dispute regarding the fact that it happened to him when the judgment of acquittal was on made. We however hope and believe that the reversal of the judgment of the High Court and the reinstatement of the fact of such a relation the appellant is entitled to an regard to his service benefits would be extended to him without any delay.

Appeal allowed

1986 AIR 1 1 403

MAJ. H.M. Supreme Court 804

G. CHENNAI'S REDDY AND  
Y. KALLID 1

1986 AIR 1 1 403 (Gandhi) No. 149 of 1985 D  
22 of 1985

Story Bright M.L.A. Prisoner v. State of  
J & K and others. Respondents

(4) Commence of India, Arts. 21 and  
22(1) - Personal liberty - Violation of -  
Police through obtaining consent of arrested  
person, not justifying him before Magistrate  
while requests period - There is great  
DILIGENTIA-DEBET

6. The allegation that P.N. 1 and P.N. 2

violation of the rights under Arts. 21 and 22(2).  
(Para 2)

(B) Constitution of India, Arts. 21, 22(2) and 22 — Largest scale machinery and machinery issue — Various facts compensated by granting suitable monetary compensation as appropriate cases — Arrest of member of Legislative Assembly while on route to seat of Assembly — Execution of person of right to attend (pending) Assembly business — Compensation of Rs. 50,000 awarded

When a person comes to the Supreme Court with the complaint that he has been arrested and imprisoned on machinery or machinery and that his constitutional and legal rights were violated, the material or material the material may not be taken into account or omitted away by the Court but in appropriate cases the Court has the jurisdiction to compensate the victim by granting suitable monetary compensation. (Para 2)

When a member of the Legislative Assembly was arrested while on route to seat of Assembly while on route to seat of Assembly was deprived of his constitutional rights to attend the Assembly business and representation for want of suitable machinery of the Court, it was a fit case for compensating the victim by granting compensation. Compensation of Rs. 50,000 was awarded. AIR 1973 SC 1006 and AIR 1974 SC 1026. Para 2.

(C) Constitution of India, Arts. 21 and 22(2) — Personal liberty of citizen — Police officers, their greatest respect for it

Police Officers who are custodians of law and order should have the greatest respect for the personal liberty of citizens and should not find the law by imposing to know any of its provisions. (Para 2)

Cases Related Chronological Para  
AIR 1968 SC 1006 1964 Cr L 130 3  
AIR 1968 SC 1006 1963 2 Cr L 100 100  
Cr L 1044 3

Mr. Atal Bihari Vajpayee, Advocate  
and Attorney-at-law for Petitioner Mr.  
B. C. Aggarwal, Advocate for Respondent

CHANDRAPPA KERRY, J. — Mr. Bhanu  
Singh, a member of the Legislative Assembly

of Jammu & Kashmir, received the writ of the powers that be. They were held upon perceiving him from attending the Session of the Legislative Assembly of Jammu & Kashmir which was held on 17th September, 1965. This appears to be the only reference that is made that he, in the case, was not of the case to which we shall now refer. On August 17, 1965, the opening day of the Budget Session of the Legislative Assembly, Mr. Bhanu Singh was suspended from the Assembly. He questioned and the suspension from the Assembly. He questioned the suspension at the High Court of Jammu & Kashmir. The order of suspension was set aside by the High Court on 26th September, 1965. On the morning of 26th (26th) September, 1965, he was proceeding from Jammu to Srinagar. En route at about 140 A.M. (or 14th) he was arrested at a place called Querahat about 20 kms. from Srinagar. He was taken away by the police. As it was not known where he had been taken, the J and K efforts to trace him proved futile. In reply Mr. Jayaram, acting on behalf of the police, application for the writ of a writ to direct the respondents to produce Mr. Bhanu Singh before the Court to declare his whereabouts (legal whereabouts) in history. He implored the State of Jammu & Kashmir through the Chief Secretary as the first respondent, the Chief Minister, the Deputy Chief Minister and the Inspector General of Police, Jammu & Kashmir respondents 2, 3, 4, 5. On Sept. 13, 1965, we directed notice to be served on the respondents, and we also directed the Inspector General of Police to return from Jammu where Mr. Bhanu Singh was kept in custody. On Sept. 14, 1965, Mr. Bhanu Singh was released on bail by the learned Additional Sessions Judge of Jammu before whom he was produced. Mr. Bhanu Singh filed a supplementary affidavit on 26th September, 1965, stating there were no witnesses to what had already been stated by Mr. Jayaram in the petition. He categorically stated that he was kept in police lock up from 14th to 14th and then he was produced before a Magistrate for the first time only on the 14th. Thereafter on 14th Sept. 1965, we issued notice to the District General Police, State of Jammu & Kashmir, the J and K Superintendents of Police, Attorney Mohd. Shah Razaq, Inspector of Police, Amn Auzam, Deputy Superintendent of Police, Udhampur, Gupta, Deputy Superintendent of Police, Bager, Kollasachic



Call out in charge of Police Station, Jammu. A copy of all details being obtained labelled the list of Jammu & Kashmir, Mohalla/Gadar Panch, A/Minister/Secretary/Deputy M. M. Khanna, Inspector General of Police M. A. Khan, Superintendent of Police Anantnag, Mohalla, Shakti Lagaria, Inspector of Police District Police Lines, Anantnag, Mohalla, Anant, Deputy Superintendent of Police Bhandipattan, Udhampur and Rajender Gupta, Panchsarny Deputy Superintendent of Police Udhampur. Shri Shree Singh has also filed a reported affidavit.

3. From the affidavits filed by the several police officers a synopsis that on 17th under S. 133A, of the Ranbir Penal Code was registered against Shri Shree Singh on Sept. 9, 1985 at Police Station, Pooch Danga, Jammu on the allegation that he had delivered an inflammatory speech at a public meeting held near Parade Ground, Jammu at 7.30 P.M. on Sept. 8, 1985. The Officer in charge of Police Station, Pooch Danga brought the matter to the notice of the Senior Superintendent of Police Jammu who in turn referred the Deputy Inspector General of Police at Jammu Bhang. On 10th Sept. 1985 request for the arrest of Shri Shree Singh was sent to the Superintendent of Police Anantnag through the Police Control Room, Srinagar. This was received by Shri M. M. Khanna, Inspector General of Police Jammu & Kashmir. Shri M. A. Khan Superintendent of Police Anantnag has however stated in his affidavit that on Sept. 9, 1985 at about 11.30 P.M. he was informed by the Police Control Room, Srinagar that Shri Shree Singh M.A. was required to be apprehended as he was wanted in a case registered under S. 133A of Ranbir Penal Code. According to him, he immediately conveyed the Officer in charge of Police Station, Quas Kandi that Shri Shree Singh may be apprehended as told when he reached his private gar. He further requested him that he should be brought to the District Headquarters, Anantnag after his arrest. These statements are obviously untrue as none of the affidavits of Shri Khanna, Inspector General of Police that the officer was the Superintendent of Police Anantnag was forwarded through the Police Control Room, Srinagar on 10th Sept. 1985. Shri M.A. has not shown any evidence why he report and Shri Shree Singh to pass through

Quas Kandi that night. Quas Kandi, even before he had received any information from the Police Control Room, there was alleged case registered against Shri Shree Singh, Shri M.A. had contacted the Officer in charge, Police Station, Quas Kandi to report Shri Shree Singh if he came within his jurisdiction. In order to do a justice as a matter of fact, he has not shown evidence for this. The circumstances occurred by him is a matter which requires our consideration. At about 10.30 A.M. according to Shri M.A. Shri Shree Singh is arrested at Quas Kandi by the Officer in charge of Police Station, Quas Kandi through the Deputy Superintendent where it appears Shri Shree Singh was provided with bandages for eyes, mouth, forehead etc. But necessary to mention here that no affidavit has been filed before us by the Officer in charge of Police Station, Quas Kandi, the officer who arrested Shri Shree Singh. It appears that under the orders of the Superintendent of Police Anantnag, Shri Shree Singh was taken from Anantnag by Shri Lagaria, Inspector of Police District Police Lines, Anantnag in a Mandor at about 7.30 A.M. on 10th September 1985. They reached, according to Mohalla, Shakti Lagaria, Srinagar at 1.00 P.M. where Shree Singh was provided with lunch. They reached Udhampur at 5.30 P.M. where Shree Singh was provided with tea and finally they reached Jammu City Police Station at 7.30 P.M. There they learn that Shree Singh was wanted in connection with a case registered by the police of Pooch Danga Station. He was therefore taken to Pooch Danga Police Station and handed over to the Officer in charge of Police Danga police Station Mohalla, Anant, Anant, Deputy Superintendent of Police Bhandipattan, Udhampur and Shri Rajender Gupta, Panchsarny Deputy Superintendent of Police Udhampur was assisted by the Senior Superintendent of Police Udhampur to control the entry passage of Shree Singh through Udhampur District. They were informed that Shree Singh was taken from Anantnag to Jammu in a Mandor. He then followed the Mandor in which Shree Singh was taking along with Chandra Police Station to Jammu and thereafter conveyed to their respective stations. According to the Inspector General of Police, Shri Shree Singh was taken to Police Station, Pooch Danga at about 9.30 P.M. Shri Shree Singh (1985) continued to police custody for two days

was obtained from an Executive Magistrate First Class. A copy of the application for removal made in Gudu with the endorsement of the Executive Magistrate First Class has been filed as an annexure to the affidavit of Shri Khayura. The endorsement reads:

Remanded for two days with effect from 11th August. It is agreed by the Magistrate and dated 11th Sept. 1985. Further the application was the endorsement shows that Shri Shree Singh was produced before the Magistrate when removed/returned. Shri Shree Singh repeatedly stated that he was produced before duty Magistrate on 11th September in the morning contacted on 11th Sept. 1985. Shri Khayura does not make in the affidavit that Shri Shree Singh was produced before the Executive Magistrate First Class on 11th Sept. 1985. But in my respectful and guarded language to say: A permit to police custody for two days was obtained by Panna Darga Police Station from Executive Magistrate First Class on 11th Sept. 1985. The Officer in charge Police Station Panna Darga has not been any different. It has to be mentioned here that Shri Shree Singh mentioned application before the Executive Magistrate on 10th Oct. 1985 so he informed us in the court when removed was obtained from the Magistrate. The Magistrate made the following endorsement on the application of Shri Shree Singh:

Remained in regard to the application with the remarks that the removal application was moved before me by the SMO Panna Darga Station on 11th September. 1985 after office hours in the evening in my residence and the Magistrate remanded the applicant in police custody for a period of two days more.

On the expiry of the remand of two days granted by the Executive Magistrate a further remand was obtained for one day, the next morning, Executive Magistrate First Class from the Sub-Judge. It was probably thought that since it is go better the same Magistrate and also his second remand. The application made in order to the Sub-Judge with the endorsement of the Sub-Judge has also been filed as an annexure to the Affidavit of Shri Khayura. The endorsement of the Sub-Judge reads:

Application for police remand has been moved by Shri Shree Lal Singh to S. H. O. P/S Panna Darga with the endorsement that the

accused Shri Shree Singh is sick (ill/weak) Certificate attached and let be removed by the Police lock up in the Panna Darga in the case at still in progress.

Forwarded the police station with the SMO and also the medical slightly sick today day. The accused is authorized to be let in police lock up for one day. The accused is produced before the Court's presence for further necessary remand orders.

The endorsement is signed by the Sub-Judge and is dated 11th Sept. 1985. We have again to mention here that Shri Shree Singh requested the Magistrate to give him a copy of the Medical certificate prepared in Panna Darga submitted to the S. H. O. Panna Darga. Certain application the Sub-Judge made the following endorsement:

Shri Shree Singh has moved an application requesting the Court to enquire the time when the police custody application was moved before me by Police P/S Panna Darga on 11th Sept. The application is also accompanied with a photostat copy of the remand order passed by me on 11th Sept. as a duty Magistrate. The application is original was forwarded to the I.C. Police Station Panna Darga for report and production of cast do as an affidavit case for period but it has been reported that the cast does not with SMO who is out on law and order duty.

From the perusal of the photostat copies of the remand order and from my recollection it is certified that the remand application was moved before me in my residence in the court hours in the evening.

Shri Shree Singh seems in his affidavit to state that he was not produced before the Sub-Judge on 11th Sept. but was he statement at any time by my deputy Shri Khayura or his affidavit again was very careful language and says:

On the expiry of the remand an application for further remand was submitted before the Sub-Judge (Judge of Magistrate First Class) on 10th Sept. 1985 who extended the remand by one day. Shri Khayura does not say a word about Shri Shree Singh having been remanded any longer. He makes no reference to the production of my medical certificate before the Sub-Judge. As already mentioned the Officer in charge of the Panna Darga Police Station has not filed any affidavit before us. Therefore on 11th Sept. 1985 Shri Shree

Singh was produced before the Sub-Judge and was permitted to communicate freely for two days with a direction to produce him before the Sessions Judge. Sessions on 10th Sept. 1985. He was accordingly taken to the Court of the Sessions Judge on 11th Sept. 1985. He was before Sessions Judge was absent, he was produced before the Additional Sessions Judge. He was released on bail on his personal bond by the Additional Sessions Judge. Then he was produced before the Magistrate on 14th September to judicial custody for two days produced before the Additional Sessions Judge on 16th and released on bail on his bond which are not disputed by Shri Bhure Singh. In his affidavit when he refers to the events of 14th and 16th September 1985 Shri Khajuria takes good care to use the words "produced before the Sub-Judge and produced before the Additional Sessions Judge". As suggested by counsel with reference to the events of 14th and 16th Sept. 1985 Shri Khajuria very carefully refrained from using the word "produced". His merely said "released" was obtained. Shri Bhure Singh has supplemented and expanded affidavits his statement in his affidavit to alleged further statements by the police. We are not concerned with those further facts for the purpose of this case. We are only concerned with the direction of Shri Bhure Singh from 1400 A.M. on 10th Sept. 1985 and he was produced before the Sub-Judge on 10th Sept. 1985. The two-sentence order stating him, furnished by the Sessions Magistrate First Class and Sub-Judge on 11th and 16th Sept. 1985 respectively do not contain any statement that Shri Bhure Singh was produced before the Sessions Magistrate First Class or before the Sub-Judge. The application for granting bail do not contain any statement that Shri Bhure Singh was being produced before the Magistrate or the Sub-Judge. Shri Khajuria, the Inspector General of Police has very carefully chosen his words and stated in his affidavit that criminal orders were obtained. He referred from stating that Shri Bhure Singh was produced before the Magistrate or the Sub-Judge on 11th and 14th. The Medical Certificate referred to in the application dated 14th Sept. 1985 has also not been produced and Shri Khajuria states he refuses to put his affidavit. In addition we have the important circumstance that an affidavit of the officers in charge of the police station Palla Darga has been filed before us.

We have the affidavits of the officers who arrested Shri Bhure Singh from 1400 hours on. At the time of hearing the petition on 19th Nov. 1985 Shri C. Aggarwal stated that the affidavits of the two police officers had been got ready but were not filed. He tried to show us some photostat copies of the alleged affidavits and proved that the case might be adjourned for filing the affidavits of the two police officers. We refused to accede to the request. There was ample time for the respondents to file the affidavits of the two police officers after we issued notice to the respondents. It is now disputed that right from the beginning they were aware of the two persons tied in the Court. The affidavits of Shri Khajuria and others were filed as late back as 18th Oct. 1985 and there was no reason whatever for not filing the affidavits of the two police officers at that time. When the complaint was of illegal arrest and detention the best one would expect the respondents to do was furnish affidavits of the officers who arrested the petitioner and the officers who produced him before the Magistrate for the purpose of obtaining order of removal. Instead of filing their affidavits several unaccompanied affidavits were filed perhaps only to confuse the case. Shri Khajuria, the Inspector General of Police filed a lengthy affidavit containing statements of fact some of which he could not be personally aware. However he chose to use careful language as pointed out by us, whenever he referred to the command of Shri Bhure Singh or his production before a Magistrate or Sub-Judge. We are convinced that this failure to file the affidavits of the officers who arrested Shri Bhure Singh and the Sub-Inspector in charge of Palla Darga Police Station was deliberate. They want to be kept back until there was due necessity. We do not have the slightest hesitation in holding that Shri Bhure Singh was not produced before the Sessions Magistrate First Class on 11th and was not produced before the Sub-Judge on 14th. Orders of removal were obtained from the Sessions Magistrate and the Sub-Judge on the application of the police officers without the production of Shri Bhure Singh before them. The statements and other orders were obtained, i.e. as the members of the Magistrate and the Sub-Judge after closed doors, without the appropriate notice of the members of the

police. The Executive Magistrate and the Sub-Judge do not in all cases take a keen concern that the police, whom they were creating, immediately had to take prompt action there. They acted in a very casual way and we consider it a great pity that this, which is almost any case of responsibility or prompt concern for the liberty of the subject. The police officers of course, acted deliberately and with full knowledge of the Magistrate and the Sub-Judge asked them rather by colluding with them or by their casual attitude. We do not take any doubt that Shri Ram Singh was not produced before the Magistrate on 4th or before the Sub-Judge on 13th though he was arrested in the early hours of the morning of 13th. There certainly was a gross violation of Shri Ram Singh's constitutional rights under Arts. 21 and 22(2). Further we referred to the circumstance that though Shri Kishan Lal, Inspector General of Police stated that information was sent to Superintendent of Police, Anantnag through the Police Control Room, Sonagar on 10th Sept. 1969, still the Superintendent of Police, Anantnag stated that on 10th Sept. 1969 at 11.30 P.M. he was informed by the Police Control Room, Sonagar that Shri Ram Singh was required to be apprehended as he was wanted on a new registered rank S. 133A of the Indian Penal Code. Nobody cared to explain why it was thought that Shri Ram Singh would give through Ghat Road in Anantnag District on the night of September 9-10. Nobody thought it is to explain how and why the Senior Superintendent of Police, Kathua never directed his officers to arrest Shri Ram Singh. It has not been explained how and when the Senior Superintendent of Police, Kathua came to know of the arrest of Shri Ram Singh and who reported him to arrange for the safe passage of Shri Ram Singh through Kathua District. To our mind, it appears as if it was expected that Shri Ram Singh would proceed from Jammu to Sonagar on the morning night of 9-10 September 1969 and there was a meeting of the Assembly on 11th September and the police were alerted to arrest him when required, as a counter-measure to the plan laid to prevent him from proceeding to Sonagar to attend the Session of the Legislative Assembly. We can only say that the Police Officers acted in a most flagrant way. We do not wish to go through the details of the constitutional acts of the police. It is the general theme of a

Member of the Legislative Assembly, is to be played with at this Indian case, but only superior what may happen to lower moral. Police Officers who are the custodians of law and order should have the greatest respect for the personal liberty, of an individual and should not flout the law by violating it. Shri Ram Singh is a citizen of India. Citizens of law and order should not become, dependent of law situation. Their duty is to protect and not to abuse.

3. However the two police officers, the one who arrested him and the one who threatened to arrest him, are not to be treated as the lesser steps of the ladder. We do not have the slightest doubt that the responsibility lies with him and with the highest officials of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the morning now before us. We have no doubt that the constitutional rights of Shri Ram Singh were violated with urgency. Since he was taken to detention, there is no doubt to make any order to set him at liberty but usually and adequately compensated, he must be. Then we have the right to award monetary compensation by way of monetary costs or otherwise, it was maintained by the learned Chief Justice in *Roelid Sahi v. State of Bihar* (1963) 3 SCR 106, 158, 161 SC 1061 and *Shri Ram Singh v. State of Bihar* AIR 1964 SC 1036. When a person comes to court to correct the complaint that he has been arrested and imprisoned with rudeness or made out wrong and that his constitutional and legal rights were violated, the complaint or motion and the remedy may not be washed away off washed away by the fact that the appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the State responsible, the State of Jammu and Kashmir to pay to Shri Ram Singh of Rs. 50,000 within two months from today. The amount will be deposited with the Registrar of the Court and paid to Shri Ram Singh.

Order accordingly.

1979) ALL. L. J. 488

= AIR 1980 Supreme Cases 302

(State of Gujarat)

11 P. MNDIA AND CO. L. COA. 11

Civil Appeal No. 1448(B) of 1979 by 29/12/1980

State of Gujarat, Appellants v. Panch of New Haroon (Respondents)

**Land Acquisition Act (1 of 1894),** Ss 4(1), 45 = **Acquisition of land** = Personal notice to each and every interested person need not be served, Civil Second Appeal No. 48 of 1981, D/ 5/7 1979 (Guj), Reversed, (1980) 10 Guj LR 383, Overruled

By reading S. 4(1) with Rule 1 of Gujarat Rules framed under S. 35 it could not be interpreted to mean that a personal notice to each and every interested person in the acquisition of S. 4 need in absence of notice upon the proceedings of acquisition will be evinced. The manner in which the notice is to be given as provided in S. 4(1) read with publication of the substance of the petition as a substituted plan in the locality, Civil Second Appeal No. 48 of 1981 by S. 7 1979 (Guj), Reversed, (1980) 10 Guj LR 383, Overruled. (Para 11)

**Case Related Chronological Para:**

(1984) 23(2) Guj LR 646 1985 Guj LR 38-9  
448 1979 SC 313 5-12  
(1980) 10 Guj LR 383 18 LR 1748 Guj 387  
5-11

Mr. G. A. Shah, Sr. Advocate, Mr. Girish Chaudhary, Mr. B. N. Poddar and Mr. C. V. Subba Rao, Advocates, for Appellants, Mr. H. J. Javeri, Advocate, for Respondents (in person)

**ORDER** — This appeal is special leave granted by the Court against the judgment of Gujarat High Court at Ahmedabad in Civil Second Appeal No. 48 of 1981.

1. Respondents Nos. 2 and 3 filed a suit No. 476 of 1956 in the Court of Joint Civil Judge (Senior Division), Ahmedabad for Rs. 4, 50, 000 of 1951. D/ 5/7 1959 (Guj)

declaration that the proceedings and awards had acquired case No. L.A.C. 1486 were illegal and for acquisition vesting the defendants, the Panch of New Haroon's Panch of Gujarat and the District Gujarat (herein doing may act affecting the plaintiff's possession of Municipal Ground No. 685 and 682-1, and Cuscuta Nos. 13-18 in 133 of Subapur Ward II and the superstructure standing thereon situated at New Haroon, Ahmedabad.

2. These lands were acquired by acquisition proceedings under Land Acquisition Act 1894 after Notifications under Sections 4 and 6 the acquisition proceedings proceeded further for determination of compensation and amount was made.

4. The provisions made by Rule 11A of Respondents, No. 1 and 2 was disallowed was granted them previously under Section 4 and Section 13 of the Land Acquisition Act and that they were not aware of the land acquisition proceedings all their landless defendants No. 3 said that possession of these lands was in the limited case to the Government on 12th July 1954. Their contention is that they were the owners of respondent No. 1 in respect of the acquired land and have stated witnesses thereupon in their evidence. Being the tenants in the lands acquired and being the occupants of the structures standing on the lands they were entitled to individual notice under Sections 4(1) and 13(1) of the Act and in absence of such notice, the same proceedings are void.

5. The person applicant the State of Gujarat, in their written statement pleaded that the notification under Section 4 upon from being published in the Gazette is reported on the map and was served on the persons known or believed to be concerned. Similarly notice under Sections 9 and 10 were also posted on the map to be acquired and were also serving the persons known or believed to be concerned on the land.

6. The trial Court held that in plaintiff's respondents Nos. 2 and 3 are persons concerned in the acquired land (by 1979) entitled to individual notice under Section 4(1) of the Act and no notice was served on them in the acquisition and hence did not know that the plaintiff respondents are

submitted to the land as there was no deed nor appear in the City Survey Record. The trial Court further held that the 'plaintiffs/ respondents had actual knowledge of the intended acquisition and as such failure to give individual notice does not vitiate the acquisition proceedings. The trial Court therefore dismissed the suit.

7. The plaintiffs respondents preferred an appeal to the First Appellate Court maintained the judgment of the trial Court and dismissed the appeal. The plaintiffs/ respondents preferred a second appeal in the High Court and secured the same confirmation. The High Court upheld the constitution and validity of the acquisition proceedings. The High Court giving reliance under section 4 of the High Court in *Ashtakumar Gordhanbhai v. State of Gujarat* (1999) 49 Guj LR 203 held that under Section 4 of the Land Acquisition Act read with Rule 1 of the Rules framed by the State Government under Section 36 of the Act, service of notice on parties concerned in the land is not only obligatory but a condition precedent and therefore on the court held the acquisition proceedings to be valid and it also granted injunction restraining the State Government from interfering with the possession of the plaintiffs of its property. The High Court refused the certificate under Art. 100 and therefore the appeal has been preferred after obtaining a certificate from the Court.

8. Learned counsel appearing for the State contended that the respondents/ plaintiffs challenged the proceedings on two grounds: (i) on the ground that Section 4 read with Rule 1 of the Gujarat rules require a personal notice of intention to acquire under Section 4(1) for the proceedings to be challenged on this ground this under Section 3(3) of the Land Acquisition Act the plaintiffs/ respondents are entitled to individual notice but it was contended by learned counsel that in the as it appears under Section 3(3) a questionnaire could only be submitted the land but in the present state after the award was made the plaintiffs respondents according the award filed a suit against the landholder who was a party to the acquisition proceedings obtained a decree for his share of the compensation. Thus having been done the question of objection under Section 3(3) was

a matter of any consequence. He therefore contended that the only question which deserves consideration in the appeal is about the second matter. Section 4 is the plaintiffs respondents in view of Rule 1 of the Rules framed under Section 36 of the Land Acquisition Act which are known as Rules, Rules adopted by the State of Gujarat.

9. It was contended that following the decision of the Gujarat High Court in *Ashtakumar Gordhanbhai v. State of Gujarat*, (1999) 49 Guj LR 203 Gujarat High Court in the present case held that as matters in the plaintiffs respondents were not served as required in Rule 1 the proceedings of acquisition are vitiated. But it was contended by the learned counsel that this was not followed by Gujarat High Court in a subsequent decision in *Vasudevi Chaudhari Pradyoti v. State of Gujarat* (1999) 25(2) Guj LR 344 in this decision the High Court following the decision in *Ashtakumar v. State of Gujarat* 49 Guj LR 203 held that individual notice under Section 4(1) read with Rule 1 is not necessary. It was therefore contended that Rule 1 of the Rules framed under Section 36 could not go beyond the requirements under Section 4(1) and so that since the rule is not in law. It was therefore contended that the High Court has committed an error in allowing the suit filed by plaintiffs respondents.

10. Section 4(1) of the Land Acquisition Act as it stood in the relevant time reads as under:

4. Publication of preliminary notification and powers of officers thereupon:—  
(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification in that effect shall be published in the Official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

11. This provision contemplates the substance of the notice to be published in the Official Gazette indicating the intention of the State Government of acquisition for a public purpose and it further requires that the Collector shall cause a public notice of the substance of such notification to be given at convenient place

in the same locality. The proposed second part of appeal of giving a notice to the Collector by not doing it at convenient place in the locality appears to be to restrict the parties affected by the impugned notice which is relevant for consideration under the rule.

(11) Subsection only mentioned under Section 4 of the Act has been published by the provisions of the Section. (There has been applied and the Collector has under the provisions of Section 4(1) issued notice to the parties concerned, and on or before the last day fixed by the Collector in accordance as the initial any objection is lodged under Section 4(1) under the Collector shall record the objections in his proceedings. Secondly, the Collector shall consider whether the objection is admissible according to these Rules.

The relevant words in the Rule are "Collector has under the provisions of Section 4(1) issued notice in the parties concerned." It is these words on the basis of which, in the impugned judgments, the High Court felt that a personal notice to the parties concerned a mandatory provision and in absence thereof a notice the proceedings of acquisition will be considered to be null and void and in the rule requiring a personal notice. What has been submitted is that the Collector has issued notice to the parties concerned under provisions of Section 4(1). Section 4(1) quoted above requires the notice in which a notice will be given to the parties concerned. And that is by giving a public notice having the substance of the notification given at a convenient place in the said locality. Therefore, when Rule 1 contemplated a notice to the concerned parties as required under Section 4(1) and Section 4(1) requires the notice to be notified at a convenient place or by mail for the purpose of the interested parties. It is, therefore, clear that by reading Section 4(1) with Rule 1 it could not be interpreted to mean that a personal notice is such and every interested person is the requirement of Section 4 and in absence of such a notice the proceedings of acquisition will be considered.

The High Court in the impugned judgments placing reliance on *Radhokumar Chaudharia v. State of Gujarat* (1967) 101 Guj L.R. 515 (page 5) came to the conclusion that in addition

also the proceedings of acquisition will be null and void. An amended earlier reading of Section 4(1) with Rule 1 does not provide for an individual notice but only requires a notice as contemplated under Section 4(1) in the interested persons. The manner in which the notice is to be given is provided in Section 4(1) itself by publication of the substance of the notification at a convenient place in the locality. It is not to dispute that such a provision was followed and therefore it could not be said that the notice as contemplated under Section 4(1) and with Rule 1 was not given to parties concerned and therefore it would not be held that the proceedings of acquisition are null and void. The High Court therefore was in error and the law stated could not be maintained.

(12) In the *Interim* v. State of Gujarat (AIR 1979 SC 515), the Court held considering the language in Rule 1(1) of the Gujarat Rules which requires that notice in Rule 1 issued should work the same as under.

Mr. Nagabhushan then submitted that no special notice was given to the appellants of the acquisition under Section 4(1) as required by the Gujarat Rules, the objections filed by the appellants under Section 4(1) were not properly required and heard, the State Government did not give any opportunity to them to make their submissions as to the report submitted by the Collector, and the relevant information stated the decision under Section 4 of the Act. The High Court was rightly held that no special notice was necessary to be given to the appellants in regard to the acquisition under Section 4(1). Our attention was drawn to the alleged Rule 1(1) of the Gujarat Rules in support of the contention that such notice was necessary to be issued to the parties concerned. There is no such requirement in the said Rule 1(1) merely, presupposes that the Collector has issued notice to the parties concerned under Section 4(1). The requirements of the statute is going to be a personal notice and by its contents, or (1) by publication of the substance of the Official Gazette and (2) causing public notice of the substance of such notification to be given at convenient place in the locality. The appellants do not contend that there was no compliance with the requirements of the said. Proper enquiry was held under Section 4(1) of

the Act and full opportunity was given to the applicant. It was not the requirement of the law to give any further opportunity after a report was made under the Secret Government. It is the function of the Secret Government to consider the report of the Collector and proceed further in the matter as they think fit and proper to do.

13 In the light of the discussion above, therefore, the appeal allowed with costs and the judgment and decree passed by the High Court in Civil Second Appeal No. 45 of 1943 are set aside and the said second Appeal is dismissed. There will be no order as to costs throughout. Security orders deposited shall be refunded to the applicant.

Appeal allowed.

1946 ALL L J 602

= 1946 Lab L C 796

(SUPREME COURT)

(From 1945 All C J 141)

A P DEB E S. VENKATARAMAN AND  
B C RAY JJ

Civil Appeal No 266 of 1945. Dy. S. 1946.

On Petition, Shri. Aggarwal v. Ashish Kumar Shri. and others. Respondent.

(A) Subordinate Civil Courts: Ministerial Establishments Rules (1947), Rr 3, 11 and Appendix D = Rules for the Recruitment of Ministerial Staff in the Subordinate Offices (1946), Rr 3, 3, 4, 7 = Recruitment of ministerial staff — Provision for, made in 1947 Rules — Promulgation of 1946 Rules as representative of existing Rules — 1946 Rules only making some modifications relating to recruitment — Rules 1947 Rules cannot be said to be repealed by implication by 1946 Rules (General Clauses Act (36 of 1897), S 4).

The Subordinate Civil Courts: Ministerial Establishments Rules (1947) Rules made appropriate provision regarding the recruitment of candidates to the posts in the ministerial establishments in the Subordinate Courts in the former United Provinces and this construction became final on July 11, 1948 (14(133)1948, 96-VII).

On July 11, 1948 the Rules for the Recruitment of Ministerial Staff in the Subordinate Offices (1946 Rules) were promulgated. They were applicable not merely to the ministerial establishments in Civil Courts but to the ministerial establishments in several other offices. They were promulgated in supersession of all existing rules and orders in the subject. They prescribed that recruitment to the ministerial staff in a subordinate office to which the new rules were applicable should be made on the basis of a competitive test and also provided for the mode of calculation of vacancies, the period during which competitive examinations should be held, the subject for the test and the marks assigned to each of the subject of examination of officers successful candidates. They also provided that appointments to higher posts in the ministerial staff in those offices should be made by promotion. Rules 9 to 12 of the 1947 Rules and Appendix B to it which dealt with other matters then stood superseded. The other parts of the 1947 Rules which dealt with the necessary details and maintenance of the candidates, their conduct, qualifications, character and personal items, the appointing authority, promotion and confirmation, seniority, pensionable rate of pay, leave and regulations of conduct of service remained intact. Since the 1946 Rules did not make any provision in regard to these topics, hence it could not be said that the 1947 Rules stood superseded without thereby by the 1946 Rules. (Para 17-18).

(B) Subordinate Civil Courts: Ministerial Establishments Rules (1947), Rr 3, 11 and Appendix D = Rules for the Recruitment of Ministerial Staff in the Subordinate Offices (1946), Rr 3, 3, 4, 7 = Subordinate Civil Courts: Ministerial Establishments (Appointment) Rules (1947), Rr 3, 3 = Recruitment of ministerial staff — Competitive test for, held in 1947 — Test held in accordance with 1946 Rules is proper — Appointment Rules of 1946 do not effectively substitute 1946 Rules 1947 All C J 602, Revised (General Clauses Act (36 of 1897) S 4, Interpretation of Statutes — Implied repeal).

Before the commencement of the Commission Amendment to the ministerial establishments in the Subordinate Civil Courts of the United Provinces was regulated by the



Yuriy Stepanov, Civil Courts, International Legal Assistance Rules 1947-1949 Rules. Rule 11 of the Rules provided that examinations shall be on basis of comparative test. Details regarding manner of holding of exam were provided by Appendix II to the Rules. By virtue of this provision of Art. 24 (and Art. 25) of the Constitution, the 1949 Rules, intended to be in force even after the discontinuance of the Constitution. But on July 15, 1990 the Congress of the Russian Federation passed the 1990 Rules for the international legal assistance to effect the administrative offices, in the State of Legal Practice including the offices of subordinate and courts in exercise of the powers conferred on him by the papers of Art. 90 of the Constitution of tasks to cooperate with the existing rules and orders in the subject. The clear effect of the 1949 Rules therefore was that the 1947 Rules stood superseded by the 1949 Rules as regards the subjects provided for the test and the manner of the examinations for the test for the purpose of preparing candidates for the exam held in the Civil Courts of the State of Legal Practice. To be precise, Rules 9 to 12 and Appendix II of the 1947 Rules were superseded. Subsequently, the Subordinate Civil Courts (Magistrate Districts) (Magistrate Rules, 1991) Amendment Rules came to be passed according to the 1947 Rules. The Amendment Rules modified R. 3 and Appendix II of the 1947 Rules. The department competent for preparing who held in the year 1991, it was held on suspension with 1950 Rules. The question was whether it ought to have been held in accordance with 1947 Rules as amended in 1949 they being framed later in time and on the same subject.

Held, that the Amendment Rules of 1991 do not effectively supersede the 1949 Rules and hence the relevant administrative matters to be applied. The 1949 Rules remained operative until at the year 1991. The comparative exam held in accordance with 1950 Rules cannot therefore be held in the year 1991. (1991 ACJ 441 Reversed.) (Para. 20-21)

The 1991 Amendment Rules do not, apparently, state that the 1949 Rules would no longer be applicable to the international legal assistance of the Subordinate Civil Courts. If this also did not appear the more referring to the Judicial Department — Subordinate Civil Courts, which is located in the Subordinate to

the, 1949 Rules. The discontinuance of the application of the 1949 Rules for the international legal assistance of the Subordinate Civil Courts can only be effected by setting aside the rule of implied repeal provided the test rule is applicable. An implied repeal of an earlier law can be inferred only where there is the enactment of a later law which had the power to override the earlier law and is totally inconsistent with the earlier law that is, a later law two times — the earlier law and the later law — cannot stand together. There is a logical necessity because the two enactments laws cannot both be valid without compromising the principle of consistency. The later law abrogates earlier contrary law. This principle is, however, subject to the condition that the later law must be effective. If the later law is not capable of taking the place of the earlier law, and for some reason cannot be implemented, the earlier law would continue to operate. To make a gap for rule of implied repeal is not attracted because the application of the rule of implied repeal may result in a vacuum which the law-making authority may neither remedy by the Amendment Rules of 1991 R. 3 of the 1947 Rules was amended. Rule 3 deals with the manner, method, qualifications which a candidate for a post in the national legal assistance to Subordinate Civil Courts should possess. The other amendment related to the introduction of the former Appendix II which related to the manner prescribed for the comparative examinations and the matter adopted to each of them as a standard before the 1950 Rules came into force by a new Appendix. Rule 11 of the 1947 Rules which required the District Judge to hold the examinations in accordance with the former Appendix II of the 1947 Rules which also stood superseded by the 1949 Rules in view of R. 3 and Part of the 1949 Rules which deals with the same subject. was accordingly replaced with a corresponding reference to the District Judge to hold the comparative examinations in accordance with the new Appendix II was introduced by the 1991 Amendment Rules into the 1947 Rules simultaneously. The result was that while the new Appendix II began to operate in the 1947 Rules governing certain subjects and matters assigned to them, the authority who should hold the comparative examinations was not again presented in the 1947 Rules. Without

the re-enactment of Rule 11, the mere re-introduction of Appendix II to the 1947 Rules by the 1958 Amending Rules would be insufficient and ineffective in the authority who can hold the examination remained unaffected. In the absence of an amended re-enacting Rule 11 in the 1947 Rules it is difficult to hold for the application of the doctrine of implied repeal that the 1947 Rules have ceased to be applicable to the institutional establishment of the Subordinate Civil Courts. (Para 20)

The 1947 Rules have not been repealed by the Subordinate Offices Memorandum Staff (Direct Recruitment) Rules 1975 (1975 Rules) made in the Subordinate Civil Courts are concerned. It is true that Rule 22 of the 1975 Rules clearly stated that the 1947 Rules had been repealed. But the 1975 Rules did not apply to the Subordinate Courts under the control and superintendence of the High Court. Hence the 1947 Rules made as they applied to the subordinate courts continued to be in force. (Para 22)

(C) **Composition of India, Art. 226 —** This portion — **Grant of relief —** Persons challenging validity of competitive exam as void ab initio — **Persons appearing for examination without protest —** Persons that are institutions that be void ab initio — **Rule 11 might not be be passed to promote 1947 AD 11 141, Revised.** (Para 23)

Mr S B Kachar for Advocate Mr R B Mathura, Advocate with him for Appellants Mr Arun Das, Sagar and Prasad Deyal Advocates for Respondents.

**VENKATRAMIAJI —** The appeal by special leave is filed against the judgment and order of the High Court at Allahabad dated April 12, 1961 in Writ Petition No. 254 of 1961 by which the High Court of Allahabad quashed the result of the competitive examination held by the District Judge of Kanpur in September, 1961 for selecting candidates for appointment in the vacancies in Grade III of the permanent staff in the Subordinate Courts in the District of Kanpur.

I believe the commencement of the Constitution, amendments to the memorial establishment in the Subordinate Civil Courts of the United Provinces was regulated by the Subordinate Civil Courts Memorial

Establishment Rules, 1947 (hereinafter referred to as the 1947 Rules). The said Rules were promulgated by the Government of the United Provinces on August 1, 1947. The expression 'Memorial Establishment' was defined by it. Part of the 1947 Rules in the staff of the Subordinate Civil Courts, consisting of permanent staff as defined in Paragraph 1 of the Provincial Handbook Vol. II Part II. According to the definition given in it, Part of the 1947 Rules the expression 'Subordinate Civil Courts' included the Courts of District and Sessions Judge, Additional District and Sessions Judge, Civil and Sessions Judge, Civil Judge, Additional Civil Judge, Magistrate, Additional Magistrate, Courts of Small Causes subordinate to the High Court of Provinces as Attached to the Chief Court of District or Sessions. It is of the 1947 Rules prescribed the academic qualifications which a person should possess for being a candidate in a post in the memorial establishment. It reads as follows:

1. Academic qualifications — No person who is not already in the staff attached to a subordinate civil court shall be appointed in a post in the memorial establishment unless

(a) he has passed at least the High School examination conducted by the Board of High School and Intermediate Education, United Provinces or any other examination which has been or may be declared by the Government to be equivalent thereto;

(b) he possesses a thorough knowledge both of Urdu and Hindi;

(c) he possesses in the case of a candidate for the post of magistrates, a diploma or certificate from a University or a recognised shortland and engineering university showing that he possesses a speed of at least 100 words in shorthand and 25 words per minute in typewriting.

2. Rule 11 of the 1947 Rules which is material for the purposes of this case reads as follows: —

(1) The examination shall be based on the results of a competitive examination, and in accordance by the District Judge in the headquarters of the judiciary. The examination and the interview shall be held in the manner laid down in Appendix II.

Provided that the District Judge may

delegated into one or more of the functions other than the function of interviewing the said laws to a senior civil judge or senior magistrate in respect of the examination held under the rules.

4. Appendix B of the 1947 Rules, which contains the details regarding the manner in which the competitive examination was to be held reads as follows:—

**APPENDIX B  
(1947 RULE 10)**

The examination shall be in three parts:

- |                         |           |       |
|-------------------------|-----------|-------|
| (1) Compulsory subjects | 100 marks | Total |
| (2) Optional subjects   | 50 marks  | 150   |
| (3) Dictation           | 100 marks |       |

Compulsory subjects shall be:—

- |   |       |
|---|-------|
| (a) Translation from English into Urdu  | Total |
| (b) Translation from English into Hindi |       |
| (c) Translation from Urdu into English  | 100   |
| (d) Translation from Hindi into English |       |
| (e) Farsi writing                       | 50    |
| (f) Dictation                           | 100   |

Optional subjects:—

- |                              |    |
|------------------------------|----|
| Accountancy and book-keeping | 50 |
|------------------------------|----|
- In the optional subjects no marks shall be awarded to any candidate who does not reach the minimum standard required for the same to B. 14.

Any clerk who is already on the establishment and is not specified as a stenographer may or for the examination in typewriting and shorthand alone and will be eligible for appointment as stenographer after qualification.

4. By virtue of the provisions of Article 145 and of Article 273 of the Constitution, the 1947 Rules continued to be in force in all other the circumstances of the Commission, till on July 14, 1984, the Governor of Uttar Pradesh promulgated rules for the recruitment of ministerial staff by the subject law officers in the State of Uttar Pradesh including the officers of subordinate Civil Courts to replace all the persons concerned as laid by the provisions of Article 109 of the Constitution of India in substitution of all existing rules and orders on

the subject. These rules were called after Rules for the Recruitment of Ministerial Staff in the Subordinate Courts, (1984) Government Order No. 10 in the 1984 Rules. Rule 3 of the 1984 Rules defined the term 'Subordinate Officer' as including all officers under the control of the Governor of Uttar Pradesh other than those of the Secretaries, the State Legislators, the High Court and the Public Service Commission. Rule 3(c) of the 1984 Rules provided that the recruitment to the lower grade of the ministerial staff in a subject, now often shall be made on the basis of a competitive test. Rules 4 and 7 of the 1984 Rules read as follows:—

3. Tests to be held annually:— The competitive tests shall be held at least once a year and in the manner specified in the Schedule to each level of a subordinate officer for posts not requiring technical knowledge e.g. stenography.

Provided that if the strength of any office does not warrant annual recruitment or recruitment at a particular year a competitive test shall be held whenever a vacancy necessary to recruit a ministerial official to the office.

4. Subjects of the test:— (1) The competitive tests shall comprise a written test as well as an oral test.

(2) The subjects of the tests and the minimum marks on each subject shall be as follows:

Subjects	Marks
<u>Oral</u>	
(a) Fluency	25
(b) General knowledge and verbal ability for the particular post	25
<u>Written</u>	
(a) Sample writing	50
(b) Hindi and English writing	50
(c) Hindi	20
<u>Optional</u>	
(a) Typewriting and shorthand	15
(b) English	35

Note:— A candidate must take one of the two optional subjects and may take both.

7 Selection of candidates — (1) On the expiry of the term, the list of the subordinate officer shall select a number of candidates sufficient to fill the number of vacancies as ascertained in R 3 and offer to their appointment and when the necessary order according to the order of merit declared as the list.

(2) No one who has not been selected in accordance with sub-rule (1) shall be appointed in any vacancy, unless the list of selected candidates is exhausted.

(3) Casual vacancies may be filled up by appointing persons who have not taken the test but their further promotion shall depend on their taking the test and being selected in it.

4 In the Schedule attached to the 1970 Rules it was provided that for the officers of the Subordinate Civil Courts the competitive examinations should be held in August in every year. The relevant entry in that Schedule reads as follows:—

#### Subpart 1A) Department

(1) Officers of Subordinate Civil Courts — August second week.

7 The 1950 Rules did not, however, explicitly say that the 1947 Rules had been superseded by these Rules. But a comparison to note that the 1950 Rules clearly stated that the Government had discontinued its supervision of all existing Rules and orders on the subject for reference to the provincial establishments of subordinate officers under its control. The clear effect of the 1950 Rules therefore was that the 1947 Rules stood superseded by the 1950 Rules as regards the subjects prescribed for the test and the manner of the examination to be held for the purpose of selecting candidates for the magistracy in the Civil Courts of the State of Uttar Pradesh. To be precise, the 9 to 17 and Appendix II of the 1947 Rules were superseded. There is evidence in support of the above rule say, for instance, in the objection of the opposing Subordinate Officer, only the office of the Secretaries, the State Legislature, the High Court and the Public Service Commission need excluded and not the office of the Subordinate Civil Courts were included in the Schedule of these Rules. On its interpretation, only the High Court also understood that the 1947 Rules

were applicable except an amendment to the amendment itself as the Civil Courts was composed. There existed from a letter written by Shri M. P. Singh, Joint Registrar of the High Court at Allahabad to all the District Judges in the State of Uttar Pradesh on February 12, 1971 which is as under:—

From

M. P. Singh, B. A., LL. B.  
Joint Registrar  
High Court of Judicature at Allahabad

To

All the District Judges  
Subordinate in the High Court of  
Judicature at Allahabad

#### CINQUE LA LITTE

Re: Mr. V. K. Datta, Allahabad  
February 12, 1971

Subject:— Recruitment to the establishments of the Subordinate Civil Courts

Sir

It has been brought to the notice of the court that many District Judges have a list of candidates in the respect of Employment Exchange in making recruitment to their establishments. Broadly speaking, the difficulties pointed out by them are as under:—

1. Once when the District Judges on the list of approved candidates having submitted, have no more candidates directly, without referring them to a regular test prescribed under the rules for filling up casual vacancies and for meeting the requirements of newly created additional posts in short space and such candidates continue in the employment of the court for an considerable time but when a test is held for recruitment, the Employment Exchange either refuses to provide the names of these candidates or withdraws their applications for one reason or the other and consequently such candidates are prevented from taking up the test.

2. Sometimes the Employment Exchange while forwarding the applications of candidates withdraws applications of such candidates who appear to be deserving and suitable to the District Judges without assigning any reason and this compels the District Judges to recruit candidates only, it is amongst the

candidates whose applications are forwarded by the Employment Exchange.

In order to eliminate the difficulties the court has questioned the whole scheme and the rules and orders thereunder of the standing orders and Department working on the subject, the following provisions is laid down by our guidance :-

It is following the provision laid down in standing rules published under Government Order No. G-111/61 d. No dated July 11 1960 (a copy was placed in my possession) at B-1 in 12 of the J. P. Subordinate Civil Courts Memorial Establishment Rules 1967 and Amended G. O. No. G-126/61 B. 12, 150 dated August 30 1960, the District Judge should in addition himself ascertain the requisition under reference to the Employment Exchange and while doing so he should also care to make it clear that all applications are to be addressed to him and moved through the Employment Exchange. The District Judge should further require that candidates should send advance copies of their applications direct to the District Judge which would go to determine whether applications have been forwarded to him by the Employment Exchange or not. However if on receiving the applications from the Employment Exchange it is found that applications of certain suitable candidates have been received by the Employment Exchange the District Judge may in his discretion, permit such candidates to take the test as contemplated in paragraph 7 of the G O dated August 30 1960 referred to earlier.

In the case of candidates who are appointed to fill up casual vacancies without appearing in the regular test prescribed under the rules and are already working on the staff of the Court concerned, they should be treated as departmental candidates and should be allowed to take the test without any reference to the Employment Exchange in order to be treated as test 2.

enable them to qualify for regular appointment.

Yours faithfully,  
Sd/

M. P. Singh  
Joint Secretary  
Administration

8. From the above it is clear that the High Court understood that B-1 in 12 of the 1967 Rules including B-11 which prescribed the manner of examination (and Appendix II to the 1967 Rules which prescribed details regarding the subjects under examination) had had in the first had been superseded by the 1970 Rules.

9. In the meanwhile in exercise of his powers under proviso to Article 229 of the Constitution the Governor had promulgated the Subordinate Civil Courts Memorial Establishment (Amendment) Rules 1969 on September 29 1969 amending the 1967 Rules (hereinafter referred to as the 1969 Amending Rules). The 1969 Amending Rules read as follows:

No. 4811/69-Pwys (B-3)

September 29 1969

In exercise of the powers under proviso to the Article 229 of the Constitution the Governor is pleased to make the following rules with a view to amend the Subordinate Civil Courts Memorial Establishment Rules 1967 published under Government Order No. 2654/1964-2-40 dated August 1 1967.

#### RULES

1. Short title and Commencement. - These Rules may be called the Subordinate Civil Courts Memorial Establishment (Amendment) Rules, 1969 (1969) and, shall come into force with effect from the date of their publication in the Gazette.

2. Amendment of B-3. In the Subordinate Civil Courts Memorial Establishment Rules 1967 (hereinafter referred to as the 1967 Rules) for the rules as in force in Column 1 the rule as in force in Column 2 shall be substituted as follows :-

#### Column 1

3. Academic qualifications. - The person who is not already on the staff of a court or a subordinate civil court shall be appointed to a post in the memorial establishment, unless :-

#### Column 2

Academic qualifications. - No person who is not already on the staff of a court or a subordinate civil court shall be appointed to a post in the memorial establishment, unless :-

Column 3	Column 4
(c) he has passed at least the High School Exam unless considered by the Board of High School and Intermediate Education, General Examiners or any other examination which has been so may be declared by the Governor to be equivalent thereto	(c) he has passed at least the Intermediate Examination administered by the Board of High School and Intermediate Education or (2) if no one other examination which has been or may be declared by the Governor to be an equivalent thereto
(d) he possesses a thorough knowledge both of Urdu and Hindi	(d) he possesses a thorough knowledge both of Urdu and Hindi
(e) he possesses in the case of a candidate for the post of Scribegrapher a diploma or certificate from a Scribegraph, or a shorthand shorthand and Typewriting Institution showing that he possesses at a speed of at least 100 words per minute in shorthand and 35 words per minute in typewriting	(e) he possesses in the case of a candidate for the post of Scribegrapher a diploma or certificate from a University or a Scribegraph and Typewriting Institution showing that he possesses a speed of at least 100 words per minute in typewriting and

## 3. AMENDMENT OF APPENDIX II

Column 1	Mark
<b>Existing Appendix II</b> The examination shall be in three parts	
1 Compulsory subjects	100
2 Optional subjects	50
3 Interview	50
<b>Total</b>	<b>200</b>
<b>Compulsory subjects shall be</b>	
(a) Translation from English to Urdu	50
(b) Translation from English to Hindi	50
(c) Translation from Urdu to English	50
(d) Translation from Hindi to English	50
(e) Phrase writing	50
(f) Dictation	100
<b>OPTIONAL SUBJECTS</b> Shorthand & Typewriting	50

In the optional subjects no marks shall be awarded to any candidate who does not secure the minimum standard required in the exam in rule 18

Any clerk who is already on the Candidates list and is not qualified as a Scribegrapher may enter the examination in Typewriting and shorthand alone and will be eligible for appointment as Scribegrapher if he qualifies

1. In the said Rules for the Appendix is set out in column 1 the Appendix is set out in column 2 shall be substituted

Column II	Mark
<b>Appendix is hereby substituted</b> The Examination shall be in three parts	
1 Compulsory subjects	100
2 Optional subjects	50
3 Interview	50
<b>Total</b>	<b>200</b>
<b>Compulsory subjects shall be</b>	
(a) Translation from English to Hindi	50
(b) Translation from Hindi to English	50
(c) Hindi Dictating (Added)	50
(d) Hindi Phrase writing	50
(e) English Dictating (Added)	50
(f) Dictation	100
<b>OPTIONAL SUBJECTS</b> Shorthand & Typewriting	50

In the optional subjects no marks shall be awarded to any candidate who does not secure the minimum standard required in the exam in rule 18

Any clerk who is already on the Candidates list and is not qualified as a Scribegrapher may enter the examination in Typewriting and shorthand alone and will be eligible for appointment as Scribegrapher if he qualifies

10. The content of these Amending Rules of 1967 was not taken note of by the High Court when the *Notice of the Rules Register* dated February 12, 1972 was addressed to all the District Judges. It appears from the said *Notice* that the High Court was following the 1967 Rules even after the promulgation of the 1967 Amending Rules for purposes of holding the comparative examination for recruitment to the managerial staff in the Civil Courts. The *Notice of Subordinate Officers/Messengers of Staff (District Recruitment) Rules, 1972* (announced referred to as the 1972 Rules) promulgated by the Government under the powers in Article 309 of the Constitution. The said Rules were promulgated in supersession of all existing rules and orders on the subject. & 2 of the 1972 Rules which dealt with these applications read as follows:

1. Application of these rules. (1) These rules shall govern recruitment to all the managerial posts of the lower grade, other than the posts of stenographer (which are regulated separately by direct recruitment) and which are outside the purview of the Public Service Commission and establishments officers under the control of the Government but extending the recruitment of the officers of State Legislatures, Lokayukta, Public Service Commission, Uttar Pradesh High Court, the subordinate Courts, under the control and superintendence of the High Court, the Additional General, Uttar Pradesh and of its establishments under the control of the Additional General.

2. From & 2 of the 1972 Rules which set out there is a clear that the said Rules were not made applicable to the Secretaries, the officers of the State Legislatures, Lokayukta, Public Service Commission, High Court, the Subordinate Courts, under the control and superintendence of the High Court and of the Additional General, Uttar Pradesh and of its establishments. The 1972 Rules mention the qualifications and the process of a competitive examination for purposes of recruitment at establishments of which had been provided by the 1967 Rules in respect of subordinate officers in which the 1972 Rules applied. Sub-rule (2) of & 2 of the 1972 Rules expressly provided that:

(2) Recruit and selection. — (i) The Rules for the recruitment of managerial staff in the

Subordinate officers published under notification No. G-2018-11-1 of dated July 18, 1967 as amended from time to time, shall be, and be deemed to have been amended with effect from June 2, 1972.

(2) It was after the promulgation of the 1972 Rules that the comparative examination, with which the said *Notice* was held under the District Judge Officer. The said examination was held in September 1972 and its results were announced on July 26, 1973. Responding No. 1 and many others appeared in the said examination. The comparative examination was, however, held in accordance with the 1967 Rules. The 1967 Amending Rules were not, however, followed. Responding No. 1 who had appeared for the comparative examination was not successful. Aggrieved by the result of the examination he filed the writ petition before the High Court of Allahabad, out of which the appeal arose. His principal contention before the High Court was that the comparative examination which had been held in accordance with the 1967 Rules was in accordance with the 1967 Rules was in accordance with the 1967 Rules and that it should have been held in accordance with the 1967 Rules as amended by the 1967 Amending Rules. The High Court held that it was evident that the intention of promulgating the 1967 Rules was only to promote a uniform system from what had been provided in the 1967 Rules but the modification made by the 1967 Rules did not, however, modify the aim of the 1967 Rules. The High Court noted the apparent discrepancy, a finding that the 1972 Rules being later in time superseded 1967 Rules to the extent of its inconsistency. After the promulgation of 1972 Rules comparative was the holding selection for appointment to the Managerial Establishments of Subordinate Courts was required to be held in accordance with the scheme of 1967 Rules and not in accordance with Appendix II of 1972 Rules in order to promote 1967 Rules continued to be effective.

(3) The High Court then found that on the promulgation of the 1967 Amending Rules the system provided by the 1967 Rules could not be followed. The High Court observed that question to follow:

The question however arises also as to the effect of Subordinate Civil Courts Managerial Establishments/Amendment Rules,

1966. Appointed officers in the Rules of 1960 were treated by the Governor according to Appendix B of 1947 Rules. The constitutional dated September 30, 1960 under which the Rules were replaced, does not contain any reference to 1960 Rules. It appears that while according to 1947 Rules, the Governor had no authority (see Appendix C of 1947 Rules) but already, upon replacement by Rule 6 of 1960 Rules, [hereinafter referred to as the *constitution rule*], to appoint different persons than those specified by 1947 Rules. There is no doubt that in the 1960 Rules, the Governor intended to replace a system of holding competitive examination for his selection and appointment to the ministerial establishments of Subordinate Courts which was open different from the system provided by R. 6 of 1947 Rules as well as Appendix C of 1947 Rules. The 1960 Rules were also issued by the Governor in respect of the same subject matter as had done by R. 6 of 1960 Rules. Since 1960 Rules were issued before the constitutional rule on the same subject, it must be held that the system prescribed by the Appearing Rules superseded for earlier rules on the subject.

14. The High Court gave one interpretation for holding that the 1960 Rules were no longer in force in the year 1964. The High Court was of the view that the 1960 Rules having been repealed by R. 20 under 1970 Rules they were no longer effective from June 3, 1974. It observed that:

The 1960 Rules no doubt purposed to amend Rule 6 and Appendix B of 1947 Rules. The language of the Rules of their nature was that they were to be in force from the date of an amendment. The Governor intended to lay down specific rules prescribing external qualifications and criteria for holding the ministerial establishments in the Ministerial Staff of the Subordinate Courts. Even if the 1960 Rules could not be effective during the period the 1960 Rules were in force, the same would be fully effective when June 3, 1974 on the repeal of 1960 Rules. We therefore, hold that in any event after June 3, 1974 recruitment to the ministerial staff of the Subordinate Courts could be held only in accordance with 1947 Rules read with 1960 Rules and not in accordance with 1970 Rules.

15. The High Court was of the view that when, after the judgment of Kanpur the

recruitment had not been held in accordance with the rules prescribed by the 1947 Rules as amended by the 1960 Amending Rules, it shows that state not careful and selected the appointments had no legal right to be appointed. It accordingly quashed the manner as held in 1961 by the District Judge of Kanpur, the results of which had been announced in 1962 by its judgment dated April 12, 1962. The High Court declared that all the candidates who had applied for the 1960 examination were however, entitled to appear for the fresh examination to be held by the District Judge of Kanpur. It further observed that in the other division of Uttar Pradesh where examinations had been held under the 1960 Rules and which had not been challenged the selection and appointments made in pursuance thereof should be treated as valid and would not be treated as null on the ground that any other way would cause great hardship which will not be in the public interest. The result of the judgment was that only those who had been selected or appointed on the basis of the competitive examinations held by the District Judge Kanpur lost their appointments or the right to be appointed but all other candidates who had been selected on the basis of examinations held in accordance with the 1970 Rules in the rest of the State of Uttar Pradesh continued in their posts.

16. Aggravated by the judgment of the High Court, the applicant who was one of the selected candidates in the Kanpur examination has filed this appeal by special leave.

17. In this case the determination in the finding of the rules and the advancement on the part of the High Court in complying with that part poses difficulty in arriving at a just solution. There is no dispute that the 1947 Rules made appropriate provisions regarding the recruitment of candidates to the posts of the ministerial establishments in the Subordinate Courts in the former United Provinces and they continued to be in force till Aug. 11, 1950. On July 11, 1950 the 1950 Rules were promulgated. They were applicable not merely for the ministerial establishments in Civil Courts but to the ministerial establishments in several other offices. They were promulgated in replacement of all existing rules and orders on the subject. They provided that recruitment to the ministerial



g all in a substantial effect to which the said rules were applicable should be made on the basis of a comparative test and also provided for the mode of criteria on of instances the period during which comparative-examinations should be held, the subjects for the test and the marks assigned to each of them and the method of selection of successful candidates. They also provided that appointments to higher posts in the industrial staff of these offices should be made by promotion. Rules 7 to 12 of the 1947 Rules and Appendix II to it which dealt with other types of posts were repealed. The entire parts of the 1947 Rules which dealt with the following: districts and residence of the candidates; their academic qualifications; their age and physical fitness; the appointing authority; probation and confidential security; prohibition of pay to officers and regulation of conditions of service continued intact since the 1950 Rules did not make any provision as regards these points. Hence we do not agree with the argument urged on behalf of the appellants that the 1947 Rules stood repealed in their entirety by the 1950 Rules relying upon the opening words of the 1950 Rules which read thus:

In exercise of the powers conferred by Article 50 of the Constitution of Sierra Leone, and in replacement of all existing rules and orders for the subject. (Emphasis supplied)

12 In supersession of all existing rules and orders on the subject, one only refers to those matters in the existing rules which were repealed by the makers dealt with by the 1950 Rules. We have explained earlier the other subjects in the 1947 Rules which were not covered by the 1950 Rules. Hence the argument based on the assumption that the former 1947 Rules had been repealed by implication and no amendments could be made to the 1947 Rules later is rejected. The High Court was therefore, right in observing that the whole of the 1947 Rules did not come to an end on the promulgation of the 1950 Rules. This problem, however, does not get solved thereby as we shall presently show.

13 The 1948 Amending Rules specifically repealed the 1947 Rules. These 1948 Amending Rules appear to have been made after consultation with the High Court as can be seen from the letter dated November 25

1948 written by the then Registrar of the High Court to the then Legal Commissioner of the Government of Sierra Leone. The 1948 Amending Rules were published in the *Sierra Leone Gazette* dated October 9, 1948. In these Rules, rule 1 of the 1947 Rules was amended. Rule 2 dealt with the minimum academic qualifications which a candidate for a post in the industrial establishment is a subordinate Civil Court should possess. The other amendments related to the substance of the former Appendix II which related to the subjects provided for the competitive examination and the marks assigned to each of them as it appeared before the 1947 Rules came into force by a new Appendix which has already been set out above.

14 Rule 11 of the 1947 Rules which required the District Judge to hold the examination in accordance with the former Appendix II of the 1947 Rules which also stood repealed by the 1950 Rules in rules 21 and 22 of the 1950 Rules which dealt with the same subject, was however not replaced with corresponding authority to the District Judge to hold the competitive examination in accordance with the new Appendix II was introduced by the 1949 Amending Rules into the 1947 Rules simultaneously. The result was that while the new Appendix II again reappeared in the 1947 Rules, prescribing certain subjects and marks assigned to them, the authority who should hold the competitive examination was not again provided in the 1947 Rules. It was necessary to amend rule 11 of the 1947 Rules because it also stood repealed by the 1950 Rules which had made provision with regard to the right contained in the former rule 11. The legal position that by the promulgation of the 1950 Rules, the former rule 11 of the 1947 Rules stood repealed by necessary implication is accepted even by the High Court in its letter dated February 12, 1950 referred to above. Therefore the former rule 11 should have been re-enacted either in the same form or with modifications and brought back to life to give effect to the new Appendix II, reintroduced in the 1947 Rules. Without such re-enactment of rule 11, the mere introduction of Appendix II to the 1947 Rules by the 1948 Amending Rules would be meaningless and ineffective as the authority who was to hold the examination remained

explicated. The method of selection of candidates also remained unspecified. In effect, none of it was provided in rules 9 or 12 of the 1947 Rules which was needed for conducting the examination and selecting candidates not known in accordance. It was correct to assume that the old rules 9 or 12 also automatically came off along with Appendix II without an explicit provision repealing them. Here we are not trying to be technical. It is to be noted that the 1955 Amending Rules do not explicitly state that the 1950 Rules would no longer be applicable to the mentioned establishments of the Subordinate Civil Courts. They also did not repeal the corresponding in the Judicial Department — Subordinate Civil Courts, which found a place in the schedule to the 1950 Rules. The discontinuance of the application of the 1950 Rules to the mentioned establishments of the Subordinate Civil Courts can only be inferred by relying upon the rule of implied repeal provided the real rule is applicable. An implied repeal of an earlier law can be inferred only where there is the enactment of a later law which had the power to override the earlier law and is totally inconsistent with the earlier law, where there are two laws — the earlier law and the later law — cannot stand together. This is a logical necessity because the two normative laws cannot both be valid without undermining the principle of contradiction. The later law adopted earlier contrary laws. This principle is, however, subject to the condition that the later law must be effective. While later law is not capable of taking the place of the earlier law and the same reason cannot be implemented, the earlier law would continue to operate. To conclude that the rule of implied repeal is not intended because the application of the rule of implied repeal may result in a vacuum which the law-making authority may not have intended. Now what does Appendix II contain? It contains a list of judges and their respective rank of three. The question is what that list of colleagues means. It is only in the practice of rule 11 that we understand the meaning and purpose of Appendix II. In the absence of an amendment repealing rule 11 of the 1947 Rules, it is clearly to hold by the application of the doctrine of implied repeal that the 1950 Rules have ceased to be applicable to the mentioned establishments of the Subordinate Civil Courts. The High Court overlooked this aspect of the case and

proceeded to hold that on the mere continuation of the case, Appendix II may still apply. But the examination could be held in accordance with the said Appendix II. It does not agree with the view of the High Court.

21 There is also no material before the Court to show that after the 1955 Amending Rules examination were held in the district districts of Lower Prudzhik in accordance with the 1947 Rules as amended by the 1955 Amending Rules. Persons including the High Court appear to have taken notice of the amendment. On the other hand examinations have been held according to the 1950 Rules even after the above 1955 amendment. The District Judge has held a similar attitude stating that the examinations were held in 1944 in the case in accordance with the 1950 Rules and not in accordance with the 1947 Rules as amended by the 1955 Amending Rules. The issue of the High Court dated February 11, 1971 shows that it treated the 1950 Rules as the existing Rules in 1971 even after the 1955 Amending Rules came into force because it is stated in that issue as follows:

While following the procedure laid down in the existing rules published under Commission Regulation No. D.117/50, 11.30 dated July 10, 1950 which was adopted by agreement of rules 9 to 11 of the U.P. Subordinate Civil Courts, Ministry of Subordinate Rules (PRT) and amended in G.O. No. 12/1958, 11.4 at 1958 dated 24.12.58, 1959 the General Subordinate

(Emphasis added)

Further it appears that in the year 1960 in some other districts of Lower Prudzhik examinations were held under the 1950 Rules. This is borne out by the construction of the High Court in its judgment, where it has expressed its reluctance to accept the results of the examinations in its original appeal, and confined the operation of its judgment to Kamov-Ghazdar only. The 1955 Amending Rules appear to have been ignored by Lower District Judges. In the circumstances having regard to the lapse created by the non-implementation of rule 11 of the 1947 Rules as held by the Court and there was no official notification of the 1950 Rules brought about by the 1955 Amending Rules. The 1950 Rules

should therefore be laid to the operating rule in the year 1973. Hence the management held according to them cannot be held to be bad.

22 We do not agree with the view of the High Court that the 1958 Rules have been repealed by the 1975 Rules insofar as the Subordinate Civil Courts are concerned. It is more than rule 20 of the 1975 Rules clearly stated that the 1958 Rules had been repealed. But the 1975 Rules did not apply to the subordinate courts under the control and superintendence of the High Court. Hence the 1958 Rules insofar as they applied to the subordinate courts continued to be in force. The fact that in a High Court in the presence of evidence and is held to be an error.

23 Moreover this is a case where the petitioner is the first person should have been passed any order. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the wrong side of the heads of examination held under other dates would cause hardship to the candidates who had appeared there. The remedy which should have been applied to the candidates in the District of Kangra was. They were not responsible for the conduct of the examination.

24 For the foregoing reasons which that the petitioners of the High Court should be an order. We accordingly set aside the judgment of the High Court and restore the Writ Petition. The appellants and all other successful candidates in the 1958 examination held in Kangra shall be appointed as subordinate magistrates under the Rules. We further direct that they shall be given the salary, allowances, increments and necessary to which they would have been entitled but for the judgment of the High Court. But they will not be entitled to any salary and allowances for the period during which they have been actually worked. We also make a clear that if in any other subordinate appointments have been made on the basis of the 1958 Amending Rules they shall remain unaltered.

25 The order passed by the High Court in the connected Writ Petition No. 19224 of 1983 on as, is also set aside. Similarly the order passed in Writ Petition No. 1973 of 1984 on

the file of the High Court is also reversed. There shall be a common order in these connected cases as directed in this appeal.

26 The appeal is accordingly allowed. No costs.

27 The High Court may take steps to set aside, or pronounce a fresh set of Rules of recruitment for the staff in the subordinate courts only.

Appeal allowed.

1986 ALL L.J. 477

(SUPREME COURT)

(From Allahabad)

R. S. VISHNUPADMANABH AND  
SARVAGUCHI MURUGAN, JJ.

Civil Appeal No. 1263 of 1984. D/- 25-4-1986.

Gurtej Singh and others, Appellants v. Regional Education Authority Agri and others, Respondents.

Minor Voucher Act (4 of 1958), Sec. 48-C, 44-D, 44-F(1) (i) (Former) - Draft scheme - Period for an approved scheme to longer than five years - Draft scheme pending approval for 15 years - Scheme quashed.

The provisions of 48-F(1) (i) which provide that where the period of operation of a permit extension to any area, made or permit shall operation to be published under 5 48-C of the Act superseded such publication, such permit may be renewed for a limited period, but the permit so renewed shall cease to be effective on the publication of the scheme under subsec. (4) of 5 48-B insofar as the legislative provision regarding the maximum period that may be spent on the process which intervenes between the date of publication of the draft scheme under 5 48-C and the publication of the approved or modified scheme under 5 48-B(4). It suggests that a permit be longer than three to five years which is usually stipulated during which a permit can be in force without renewal as provided in 5 48.

The draft scheme is depend published under 5 48-C on page 25 1980 and substituted not yet 52x 120-C28508/7979.

been approved, even though 25 years have elapsed since its publication, deserves to be quashed. It could never have been in the contemplation of Parliament that the period for approving a scheme with or without modification or for rejection could be more than 25 years in all the cases. (Para 3, 4)

Cases Related	Chronological Period	
AIR 1989 SC 189	(1953-4) SC 182	4
AIR 1989 SC 242	(1953-4) SC 182	4
AIR 1989 SC 506	(1953-4) SC 182	4

**VENKATARAMIAH, J.** — The appellants are carrying on the business of running stage carriages in the State of Uttar Pradesh. They had obtained temporary permits under Sec. 48 F(1) C of the Motor Vehicles Act, 1930 (hereinafter referred to as 'the Act') on the main Jaunpur Highway. They could not obtain permits under Chapter IV of the Act to operate on the road which runs a scheme published under Sec. 48 C of the Act in the year 1940 was in force. It would appear that the Uttar Pradesh State Road Transport Corporation (hereinafter referred to as 'the Corporation') applied for license temporary permits for operating its stage carriages on the road in question indicated them from the Regional Transport Authority. Aggrieved under S. 48 F(1) A of the Act as per its order dated 21.1.1984 that the Corporation introduced only five services against fifteen permits. Thus there were ten vacancies. The Regional Transport Authority granted ten temporary permits to ten private operators in those ten vacancies. One Devendra Pal Singh who was holding a non-temporary permit issued under Chapter IV of the Act obtained permits under Sec. 48 A of the Act before the State Transport Appellate Tribunal. The permits was granted. On account of the permits of public the number of temporary permits was reduced to thirty four. The Corporation was granted three additional permits, but it failed to operate its services under all the permits issued to it. The private operators who failed to operate the vehicles were also granted temporary permits. The appellants were asked to stop plying their vehicles under the temporary permits obtained by them. Aggrieved by the stoppage of the running of their vehicles, they filed a writ petition in the High Court of Allahabad at Delhi. Meanwhile

Writ Petition No. 1413 of 1985 contending that once temporary permits were issued under Sec. 48 F(1) C of the Act they could never expire until the date a scheme published under Sec. 48 C was approved under Sec. 48 B of the Act. The High Court being of the opinion that no permits being issued to the State Transport Undertaking, i.e. the Corporation in this case, the temporary permits issued to other private operators under Sec. 48 F(1) C of the Act came to an end. Dismissed the writ petition. Aggrieved by the judgment in the writ petition, the appellants have filed the appeal by special leave. When this petition came up for admission on April 1, 1986 before the Court it was urged by the appellants that the draft scheme published under Sec. 48 C of the Act having become stale was liable to be quashed as a matter of course of the rules of equity evolved by the Court. On the basis of the above submission certain writ issued to the State Government and the Uttar Pradesh State Road Transport Corporation — the respondents failed to show that why the draft scheme should not be quashed. The master affidavit has been filed on behalf of the Corporation opposing the prayer made in the appeal.

**2.** The draft scheme admittedly was published under Sec. 48 C of the Act in June 21, 1940 more than 25 years ago and it has not yet been approved. It is still in the stage of a draft scheme. No law has been taken through the master affidavies filed on behalf of the Corporation setting out the several steps taken in the proceedings before the Licensing Authority under Sec. 48 D of the Act. On going through the master affidavit we are not convinced that sufficient proceeds have been made out for running stage carriages at the date of time. It is clear that there is substantial prejudice for the grant of permits to ply stage carriages on the route. Yet the State Transport Undertaking which is expected to provide adequate efficient economical and co-ordinated service has failed to do so even after intervening years have elapsed. It can be said that some operators had adopted detouring tactics. But the Licensing Authority, under Sec. 48 D of the Act should have taken necessary steps to conclude the proceedings early. The delay of nearly a quarter of a century is unreasonable. The draft scheme has become stale and useless. We find that there has



Section 128 lays down the procedure for enforcing the order which was passed under S. 125 Cr. P.C. It has been clearly laid down that such an order may be enforced by any Magistrate in any place where the person against whom it is made may be or such Magistrate being satisfied as to the identity of the person and the non-payment of the allowance due. The forum for enforcing the order passed under S. 125 Cr. P.C. as laid down in S. 128 is the Magistrate where the person against whom that order was made resides. (Para 10)

(B) **Ground F.C. 12 of 1974, S. 128(3) Provision.** — *Order to maintain a woman in case of matrimonial enforcement of order under S. 125*

The provision S. 128(3) makes it clear that a Magistrate may make an order under S. 125 Cr. P.C. and the steps for enforcing the order is when the person's residence is recorded in support of his respective claims. This provision does not lay down that the order to maintain a wife made even after the divorce on that point has been given later according to the residence of the person or that such an order can be made in the case of divorce and enforcement of the order. (Para 9)

(C) **Ground F.C. 13 of 1974, S. 431 and 128(4) — Amount of maintenance amount.** — Can be reduced by restricting salary of the husband

Under Section 426 Cr. P.C. the recovery of fine can be made by attachment of any movable property belonging to the offender. Sub-section (2) of Section 128 Cr. P.C. empowers the Magistrate to make a warrant for levy amount due to the master paid and for forming the fine if there has been breach of the Magistrate's order. It follows that the amount of the maintenance allowance can be reduced under S. 431 Cr. P.C. The salary of the employee is movable property and the same can be attached under clause (a) of sub-section (1) of Section 426 Cr. P.C. 1960 Lucknow L.J. 329 Distinguished. (Para 11)

**Cases Related Chronological Order**

AIR 1984 SC 798	1984 Cr.L.J. 447	10
1986 Lucknow L.J. 329		10
1974 Cr.L.J. 176 FC 66		12

AIR 1960 Patn. 221	1960 Cr.L.J. 145	10
1977, 1982-83	1978 L.J. 107	10
1984 Patn. 101		11

M. A. Saksons for Applicant S. K. Maheswari for Opposite Party.

**ORDER.** — Majinder Abhee filed the revision against Smt. Saksons challenging the order dated 16-12-1982 passed by Sri Narendra Bahadur Singh, District Magistrate Alkherpur District Prakashpur regarding his objection.

1. The parties were married in each other. The opposite party (Smt. Saksons) moved an application for maintenance under S. 125 Cr. P.C. which was allowed on 1-12-82 and her maintenance allowance was fixed at Rs. 150/- per month by the Magistrate against the revision. The maintenance allowance was payable with effect from 25-4-80. The husband Majinder Abhee filed a criminal revision No. 2 of 1982 which was dismissed.

2. Opposite party (Smt. Saksons) moved an application under S. 128 Cr. P.C. with a prayer for reduction of Rs. 1200/- which had become due. The revision Majinder Abhee filed objection which was dismissed and the Magistrate passed an order for reduction of the amount of Rs. 1200/- by deducting a sum of Rs. 200/- p.m. from the salary of the revisionist.

3. The revisionist claimed to the revision that he was employed as a sub-station in the railway service as the Police Department and that the amount of salary had been reduced under S. 128 Cr. P.C. to reduce the amount of maintenance from him. He stated second point to the effect that he had offered to maintain Smt. Saksons as a co-respondent and the learned Magistrate ought to have decided that point. Thirdly he claimed that the amount of the amount of maintenance allowance could not be reduced from his salary.

4. The revisionist relied on the provisions of S. 128 Cr. P.C. which read as follows: —

128. A copy of the order of maintenance shall be given without payment to the person or whom service is made or to his guardian if any, or to the person to whom the allowance is to be paid, and such order may be enforced by any Magistrate in any place where the

person against whom it is made may be on such Magistrate being satisfied as to the ability of the person and the non payment of the allowance due.

It is evident from the readings of the amended S. 128 that this section (S. 128) lays down the procedure for enforcing the order which was passed under S. 124-Cr P.C. It has been clearly laid down that such an order may be enforced by, say, Magistrate or any person whom the person against whom it is made may be on such Magistrate being satisfied as to the ability of the person and the non payment of the allowance due. The procedure has been specifically mentioned by the legislature for enforcing the situation where a person against whom an order is passed lives outside the jurisdiction of the Magistrate who had passed the order as in the case in the present proceedings. The respondent stated living in Lucknow. Therefore, the order can be enforced at Lucknow only subject to the condition that the Magistrate in Lucknow has to satisfy himself about the ability of the person and the non payment of the allowance, due. The forum for enforcing the order passed under S. 124-Cr P.C. as laid down in S. 128 is the Magistrate where the person against whom that order was made resides.

8. Sub-section (1) of S. 128-Cr P.C. lays down that if any person is ordered to pay without sufficient means to comply with the order, any such Magistrate may, for every breach of the order, direct it to warrant for bringing the person due under restraint provided for leaving time and may sentence such person, for the whole or any part of each month's allowance non-compliance except after the expiration of the next day to imprisonment for a term which may extend to one month or until payment of money made.

Provided that no warrant shall be issued for the recovery of any amount due under this section unless a certificate is made by the court to levy such amount within a period of one year from the date on which it became due.

14. The procedure for executing the order passed under S. 123 is laid down in S. 128-Cr P.C. which deals that proceedings under S. 128 may be taken against any person in any district where he is or where he is his wife resides or where he has resided with his wife or in the

case may be with the mother of the illegitimate child. In the proceedings now being taken against a person for maintenance of the maintenance allowance in any district where he is living and the mode of the enforcement of the order of maintenance as provided in S. 123-Cr P.C.

9. As about the point of time to execute a law has been laid down in stated person to Section 125(3) that if any person offers to maintain his wife on condition of living with him and the refusal to live with him, such Magistrate may consider any person, situated, stated by, his wife's order under the section notwithstanding such offer if he is satisfied that there is just ground for so doing. The present said matter is clear that a Magistrate may make an order under S. 125-Cr P.C. and the court for considering the offer or when the parties evidence recorded in support of the respective claims. The present said matter does not lay down that the offer to maintain can be made even after the decision on the point has been given after recording the evidence of the parties or that such an offer can be made at the time of execution and enforcement of the order.

10. The respondent relied upon the case of *Smt. Poojai Bhatt v. Dr. Anand Singh*, AIR 1960 Pwaj 174 in which case it was argued that the present may be taken into consideration only after an order for the payment of maintenance allowance had been made by the Magistrate under sub-section (1) of S. 125 and the same is deemed to be enforceable by the wife and a warrant that if the respondent accepted, it would mean that as an appellant under S. 481-Cr P.C. for failure of maintenance allowance the court is not entitled to take into consideration the offer made by the husband to maintain his wife on the condition of her living with him even if such offer is made in good faith and even though the wife had no option to accept or reject the offer. But that referred to the promise of such husband (1). As about the promise to maintain, Cr. only the Magistrate observed that they were not directly involved and the same to be made as maintenance on the point while the first part of the present was available to the husband on an order sub-section (1) at the time of the decision of the application as well as at the time after enforcement of the order. As about the offer provided a law has been observed.

If that be so then the latter part of the

program would be applicable, as well as the local diagnosis is found to contradict the grounds given by the rule of any other rule, the other rule(s) for the localized or common disease combination and the common rule, too.

Thus, there has not been a definite finding on the point that the Magistrate's immediate second order was issued in the form of an order to maintain order when he decided that some order and such an order is equal to an order in the form of the enforcement of the order of maintenance of discipline in the second order the learned Magistrate has rightly observed that it was not proper to pass second order on the same point. The form of the order was thus considered by the Magistrate.

11. The respondent first contended that the amount of the respondent's management allowances could not be realized from his salary, as referred in § 401 of and as proviso of G. P. C. that it is not a case where the provisions of Section 50 are applicable for the respondent to come under the definition of laborer as contemplated by section 40 G P C. Under Section 41 G. P. C. the recovery of loss can be made by issuing warrant for the loss incurred by attachment and sale of any movable property belonging to the defendant. Subsection 17 of Section 45 G. P. C. empowers the Magistrate to issue a warrant for levy arrears due in the manner provided for levying the fine officers that have been provided for. The Magistrate's order is shown that the amount of the management allowances can be realized under § 401 G. P. C. The salary of the employee is movable property and the right due to attach and/or claim of the respondent (1) of Section 40 G. P. C. The provision relied on that date of Termination of Service Decy 1953 Subsection 17 of which state the Special Magistrate who had no power to direct the employee of the applicant for deducting 1/3rd of the amount from the appropriate salary and from the same to the appropriate party. But passed such an order and it was held that the Special Magistrate could have given a direction to the Revenue Officer and he could have only issued a warrant to the Collector under Section 45(G) G. P. C. Thus in the case also a warrant may be issued to the Collector for attaching a sum of Rs 300/- per month from the salary of the respondent's management allowances. But the order of the respondent of the respondent

[illegible]

no need is apparent for the levy of the mortality insurance and sale of my strength because, following is the offering:

claim a interest in the Collateral of the  
debt, including the right to receive the amount  
in arrears of and interest from the mortgage  
on immovable property or both of the  
debtor.

Thus, the Magistrate who passed the order could under clause (a) of sub-section (1) of Section 421 demand issue a warrant for attachment of the salary of the officer. He was authorized to take recourse, in any of these alternatives (a) or (b) or procedure to lock the doors (a) and (b). The facts of the case were different as the Magistrate himself was directed to return the amount to the opposite party and not to the Court as the Magistrate who had jurisdiction to pass such an order had also a claim of recovery for the period of more than a year was made. The court was referred to clause (a) of sub-section (1) of Section 421 Cr. P.C. Any direction regarding clause (a) of sub-section (1) of Section 421 Cr. P.C. need not have been in it.

12. Yet the stand concerned on behalf of the community would obviously lead to tensions and starting attacks. In fact enough tension that even though a decision was passed against the fishermen, and the opposing party was held innocent on numerous occasions, the world was far from the peace that it seems on the other otherwise or disputes raised by the fishermen. It is well known law that if an interpretation leads to an accusation and misunderstanding, the same can be avoided. For that the observations made in the case of *South Coast Fisheries Ltd. v. Ajar (P&H)* 2 KLR 101 may be noted.

A judge, before any lawsuit is filed, has the power to determine whether the lawsuit is worth pursuing. If the judge determines that the lawsuit is not worth pursuing, the judge will dismiss the lawsuit. If the judge determines that the lawsuit is worth pursuing, the judge will allow the lawsuit to proceed.



savage and wrong that Nations that the defendant have not provided for this or that or have least guilty of some or the other sinners. It would certainly save the Judges trouble. I Amos of Parliament were drafted with some particular and perfect change in the situation of it. When a defect appears a Judge cannot simply fold his hands and blame the defendant. He must set to work on the constructive task of finding the intention of Parliament, and because the threat only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, finding the mischief which it was passed to remedy and then to meet applicants the words used so as to give effect, and life to the intention of the legislature.

Also a much-quoted case of A. B. Attridge v. British Western Airways, AIR 1964 AC 718 that it is a well established canon of construction that the Court should read the words as if it had found it necessary to read as construction, not does any notion of construction permit the Court to read the words which state an unresolvable and unresolvable case.

13. Therefore, the previous law and is hereby dismissed. The stay order is varied.

Reasons dismissed.

1984 JUL 5 3 47P  
LUCKNOW MCHC  
D. H. BIA, J.

Observe Applicant v. State of U.P. Oppose Party

Criminal Issue Case No. 1916 of 1981 Dr. L. S. 1985

(A) Criminal P.C. Dr. of 1974, S. 408 —  
Grant of bail — Consideration — (For  
criminal) Ministry — Person cannot be held to  
have an criminal history because he is not  
convicted in a case.

If a person employed in a large number of  
cases, misgives observations are against of  
misconduct and history of law is would not  
mean that the man that is crime case. It is also

to be noted that wrong to delay in trial to  
many things happen an account at which  
accused not in mean accepted. Therefore  
more important factor here would be which in  
circumstances the people that unless and until a  
person has not been convicted of crime he  
read that the man does not have a criminal  
history. Section person is before past criminal  
history cannot be proved but.

(Para 3 and 4)

(B) Proceedings — Even when facts of  
High Court is finding on subordinate courts  
— Subordinate courts are not expected to  
give explanation contrary to the observation  
made by the High Court.

(Para 14)

Interim Motion for Apprehension

ORDER — This is a second bail  
application. The first bail application was  
rejected by the Court with order dt. 3.6.1985.  
It may be mentioned that it is established Court  
to bail being in mind that he had no past  
criminal history.

2. In the second bail application it has  
been brought to my notice that the learned  
Chief Additional Sessions Judge, S. S. S.  
Sessions allowed bail to Ram Kumar on 7.6.  
1985 and on accused. Subsequently has been  
submitted to bail order order of the learned  
Sessions Judge, S. S. Sessions, S. S. S. dt. 8.7.  
1985. Both the learned Judges have not applied  
their mind to the order passed by the Court.  
S. S. Sessions, S. S. S. has even gone to the  
extent of observing —

The criminal history of the applicant  
accused is not under consideration and  
the involvement is clear.

It appears that the learned Judge is not aware  
with the surroundings in which the criminal  
justice is supposed to be dispensed by the  
courts. He is also not aware with the facts  
that are being presented before him and he is  
the learned Court with respect to criminal  
case. It is not merely the conviction of an  
individual a case that would entitle him to  
criminal history. It is a known fact that even if  
high cases are being committed to courts  
and numerous charges to appear against, hard  
case demands. I imagine if circumstances come to  
the notice of the Court that circumstances  
in criminal cases have been. It is high case

the learned Sessions Judge welcomed the criminal law and has granted the remedy of the remedy for which the law has to be promulgated. The most important function of the Court is that it acts as the guardian of law. The object of reform is to ensure the position demanded by the rule of right to substantive justice for litigation and to exempt the investigation in respect of causing injury to the parties because it is an act contrary to the order passed and well being of the society.

3. If a person being involved in a large number of cases escapes prosecution on account of technicalities and thereby of law it would not mean that the man has a clean slate.

It is also to be noted that on account of delay in justifying things happens on account of which accused are at times acquitted. Therefore, mere acquittal constitutes a good precedent to encourage the principle for release and not a person who has been convicted a criminal be made to feel that the man does not have a criminal history. It is to be noted that like employees by police and the investigating agency also claimed to be kept at bay, these facts are also clear in offences under Ss 302, 304, 305, 402, 474-C and 5. 21st Amendment Act and that they were kept in the criminal category in deal with persons who try to act as a hostile witness against police of law enforcement authorities. However, mere acquittal is not open to them would not go back against the person altogether in circumstances of offences. The Courts have to collect an over all picture of seeing the learned court for the purpose of purpose of entering a person to bail. It is not only the duty of the police to provide account to the society but the Courts have also a very important role to play in safeguarding the innocent society with all a man in a person to have individual police prosecution. I have no reservation in observing that the Sessions Judge by making observation in the order S. 147 (198) tried to disagree with the order passed by this Court. It is not expected from the subordinate courts give importance contrary to the observations made by the High Court. Even after the date of the High Court from a leading office on the subordinate courts. The Court has made certain observations while admitting Guilty to bail and therefore the Sessions Judge by making Sessions

and the 3rd Additional Sessions Judge by S. 147 (198) observations should have clearly stated them otherwise. Before admitting the accused to bail to bail. The subordinate courts observation by the subordinate courts as cases placed the Court in a very embarrassing situation and such a practice should be avoided by the subordinate courts.

4. In view of my observations already made in the order forwarding, the bail I am not going to give to any of the persons with a specific just criminal history of Mumbai. He is not entitled to bail on merits.

5. However, in view of the marginal conclusion reached with the application with respect to admission of applicants with 1 other offence to a short term bail for a period of four months without committal to the jail on the date of admission of the applicant, as long as on his furnishing adequate sureties and a personal bond on the like amount as the conditions of the Court informed Magistrate Sessions to enable him to provide material evidence to be along with. The applicant shall surrender after expiry of the period.

6. Let a copy of the order be sent to the Sessions Judge, Sessions for communication to the concerned Additional District and Sessions Judges.

Order accordingly.

1988 MUM. L. J. 859

B. L. YADAV, J.

Abdul Razvi, President, Deputy Director of Consolidation, Mumbai and others Respondents.

Civil Misc. Writ Petition Nos. 9102 and 9175 of 1987 of 1988.

1988, S. 172 (1988) - Sessions - Holding of - Mohammedan officers - Under Personal law also to absolute owner of the land - Waqf Commission (Bihar) - No steps taken by Government to select her for about 50 years - Necessary to her holding would be governed by S. 172 (1988) and not S. 172 (1988) - Constitution of India, Art. 226.

CD/90/107/90/97/90

The requirement for the holding of a matrimonial union who transmitted owner under the personal law applicable under and against whom no steps were taken by the claimant is as set forth for above 38 years and who had become Moslem at the holding under L.P. Agricultural Tenants (Acquisition of Possessed Acre) would be governed by the provisions of S. 178 (a) and not by section 22(a) (1) A.D. 1974-80 (1st Draft).

(Para 9)

Furthermore, when the claimant who was not the heir of the widow had taken no steps to evict the widow under the various laws such as Acq. Tenancy Act 1934-35 P. Tenancy Act 1939 etc. then whether for above 30 years and had also not taken any steps to evict the widow of Shaudan passed to the widow, the order refusing her claim to the widow's holding passed by the Consolidation Authorities confirmed to have done substantial justice and with such an order the High Court would not interfere under Art. 226 of the Constitution. (Para 10) (11)

#### Cases Related Challenging Para

A.D. 1974-80 (14)

19

A.D. 1972 Ad (16) 1971 Rev D. L. 142

20

E. H. Zaid for Petitioner (Land Court) for Beja, Gouda

**ORDER** — The petition under Art. 226 of the Constitution is dismissed against the order passed by the consolidation authorities.

1. The facts at brief are that under S. 19A(1) of the U.P. Consolidation of Holdings Act (the amended Act) the petitioner filed an application stating that Mrs. Mahman and Ven. Shaudan (at the holding passed in para 2 of the petition) have married. In consequence thereof and solely upon the petitioner Abdel Razek and he became the sole Moslem.

2. The petitioner's case was based by Mrs. Shaudan respondent 4 whereas Mrs. Mahman had died earlier and in her place Mrs. respondent 3 was made party and he contended the case that Mrs. Mahman did not marry, and in any case she had deposited the entire rental and two acres (Shaudan along with the petitioner and others co-tenant holders

including Mrs. Shaudan and he'd acquired Moslem's rights under the provisions of U.P. Agricultural Tenants (Acquisition of Possessed Acre) the case much before her marriage to come (transferring to the knowledge of the petitioner who did not object nor he filed any objection, hence, he transmitted her during the same and in any case she acquired considerable interest and because full blooded Moslem and after her death her interest cannot devolve on the petitioner.

3. The consolidation authorities decided the case upon the petitioner and those orders have been challenged in the present petition.

4. In E. H. Zaid appearing for the petitioner urged that Mrs. Shaudan respondent 4 has no married, hence has no marital interest on the petitioner. But in a work relation that she died long ago and they had married a well known friend of Hassan Choudhary Kalia, Bhow and April near of Tawal, residents of village, Nohamapur, Pargana Petha, Tehsil Gark, District Chaudhary and those together had been in transferred their interest on Gark of Mrs. Mahman's and Mrs. Mahman both of village Petha Pargana and Tehsil Gark District Chaudhary by a registered sale deed dt. 8.1.42. An application was filed by the petitioner that these transactions may be made representative place of the deceased Shaudan but when the next petition came up for hearing, the application for replacement stated by the petitioner was declined for hearing. Earlier the consent for the applicant proved the application for replacements and an order was passed on 17.12.45 for replacement of Mrs. Mahman and Mrs. Mahman. But before the order could be signed the counsel for the petitioner made a statement that the order may not be signed and he would think over the matter in respect of pending the application for replacements. On the next day, he made a statement that he does not want to prove the application, hence that may be dismissed as not proved. Therefore, I have no option but to dismiss the case as not proved and also the result is that Mrs. Shaudan respondent 4 has died and no subsequent application has been filed and an order was passed on 28th Sept. 1963 that Mrs. Shaudan had died and her name was deleted. There was no reference to this effect on page 2 of the next petition. I have accordingly no option but to dismiss the

was positive square root of the variance component  
of the random effect.

4. There is also an application purported to have been filed on behalf of the legation and the consulates for abatement of the visa parsons and in view of the facts stated above the application has to be allowed unless we get any intimation to have shown against it.

7. As regards the emergence of New Humanism, forward-oriented for the postmodern world that also has to encourage the postmodern world to be governed on a democratic basis. It is of the day and the postmodern world would succeed being human, labor's own. The human element placed within the human. See *Humanism*, 4/10, 1976, 1977.

[illegible]

9. I am in respectful agreement with the principles of law laid down in *Hampton v. East Florida, Inc.* (438 F.2d 104) regarding the fact that the facts of the present case are materially different. I am of the opinion that *Hampton* has laid down a rule that would not apply. The

was a tenant in respect of a house who was according to the parties law (personal law) applying to the parties the building (land), whether in the nature of a leasehold, was treated as the building absolutely in accordance with the personal law (personal law applicable to him). For the fact alone to state the plaintiff did not take any step to file a suit for her apartment. Further the fact deposited was only rental and becoming defendant under the provisions of U.P. Agricultural Tenancy (Amendment) of Privileged Act. It was accordingly, of the view that the provisions of S. 17(2)(a) of would apply and not the provision of S. 17(2)(b) of. It is of the view that the second Kaur Singh + Babu Singh (sister) was under and then in S. 17(2)(a) of. I held that in such circumstances neither the present case for agreement would be concerned nor be S. 17(2)(a) of.

(H) There is another aspect of the matter. Justice, Halabaz has suggested, limited *Shahmoradian* and the declaration granted in his favour was not yet cancelled by the parliament in view of the procedure provided under § 137 A, within a period of three years as provided in Appendix II to Law No. 10, therefore the claim of the petitioners to get the certificate cancelled became time barred.

11. There is yet another aspect of the matter that the petitioner under Art. 226 of the Constitution not be an appellate court; thus though some order may appear to be erroneous or even without jurisdiction, the Court can decline to examine jurisdiction under Art. 226 of the Constitution in case judicial review has been done. In the matter cited I find that Just. Mathania was a widow some prior to 1956. She has the late about 50 years and the petitioner being quite alive at the instance, did not take any initiative to effect her to file a suit against her on her under the Age Tenancy Act 1928 or under the U.P. Tenancy Act 1948 even before the commencement of correspondence upon the petitioner did not file any suit either under S. 20 of or under S. 209 of the Act and she has died long ago and her son Jang from her second husband has been made a party to respondent 3. Under these circumstances I am of the view, that it is not an appeal but an initiative between the parties. Further there is no other ground. *Wajiduddin Khan, Deewan*

does lack Substantive, which otherwise means that the issues there are not right and not even a 10 drop more than right. In the instant case last, Pakistan became within observation that 25 years ago and the prosecution was dragging over the matter. Issue 1 out of the 10s that has a 100% to reject the evidence stated under Art 236 of the Constitution to let under the circumstances of the case.

12 In type of the discussion made previously, the parties lack merit and is seriously discussed. Under the circumstances, there shall be no order as to costs.

Forces Remitted

1994 A.L.J. 1, 3 685

31 N. 284, 284A, J

Hossein Shamsi, Appellate State of U.P. and another Opposite Parties

Original Review No 2252 of 1981 Cr/ 20 25 1981

Criminal P.C. (3 of 1974) Sec 203, 225, 399 and 401 – Penal Code (47 of 1860) Sec 307 and 302 – Case under S. 307 against accused pending in Sessions Court – Accused filing complaint under S. 203 before Magistrate against complainant in Sessions case – Magistrate initiating discussion under S. 225 Cr. P.C. and in certain case in Sessions as it was not even case – Ratiocational order of Sessions Judge directing Magistrate to commit case held, was improper

The rule as regards the case cases to be held by the Court is only one of procedure to avoid different standards being applied in two cases arising out of the same transaction. Under S. 203 Cr. P.C. the Magistrate after examining the evidence has a discretion in the matter of committing the case to the Sessions Court. The discretion of the trial court should not be lightly interfered with unless it appears that it was exercised arbitrarily by relying on irrelevant evidence or suffered from some fundamental legal error or was motivated without prejudice. Where a case of attempt to murder under S. 307 against the accused

was pending in the Sessions Court and a complaint under S. 203 P.C. was filed by the accused against the complainant in the Sessions case and the Magistrate after examining the facts and evidence gave good reasons to commit the case to the Sessions Court, it was not a prima facie case in respect of the accused against the complainant and was not of the same occurrence and time, place, and nature. The Magistrate was to hold to have examined the evidence properly and therefore the ratiocational order of the Sessions Judge interfering with the discretion of the Magistrate with regarding cognate grounds and directing him to commit the case to the Sessions Court could be improper and must be set aside. It would be open to the accused in the Sessions trial to show performed murder version of facts the evidence arising out of the same occurrence according to the A.L.J. 1994 A.L.J. 498-499 and 500 para 17-18.

Case National Chronological Form, 1994 A.L.J. 498 17

V. K. Shukla, for Appellate English Text on A.O.A. for the State P.C. Shamsi, for Opposite Party No. 2

ORDER – List has been moved

1 The revision was already part heard previously when it was taken up in the original list.

2 I have heard Sh. V. K. Shukla, learned Advocate for respondent and learned A.O.A. on behalf of State.

3 Sh. P. C. Shamsi, learned Advocate for opposite party No. 2 did not turn up yesterday or today.

4 The revision is directed against order dated 19.7.1984 recorded by Sh. S. K. Gupta, learned (and Additional) Sessions Judge, Etah in Criminal Appeal No. 82 of 1981. By the impugned order, learned Sessions Judge has made the order of the Magistrate dated 28.2.1984 and directed him to commit the case to the Court of Sessions.

5 The session, going near the revision, occurred on 2.11.1987 at 4.30 p.m. when the

included a license handgun brand and when we stopped to have cleaned the house of law for being brand armed with weapons and made an attempt on his life.

7. First information report was lodged in police station Kanyaga station Rank in the community and Crime No. 72 of 1977 was registered. The case was committed to the Court of Sessions and a postmortem on Suspect Timothy 263 of 1976 in the Court of Sessions.

8. Narcotics Prasad, opposite party No. 2 could not file his report in the police station investigated in Superintendent of Police Rank. His application was registered as Crime No. 125A of 1977. Narcotics Prasad alleged that incident occurred on 2 of 1977 at about 1:30 P.M. as he shop being Prasad was, mentioned the age found from his shop and smoked him while he was sitting in his shop and on that occasion Major took place. However, the case was not sent up by police but had to be assigned on a complaint, under Sec. 147(3) IPC. The accused were mentioned by learned Magistrate.

9. On 20-1-1978 an application paper No. 147B was filed in the court of Magistrate by complainant that this case should be committed to the Court of Sessions and was the most case of the aforesaid Sessions and learned Magistrate observed that there was no evidence to commit to show that a murder case can be investigated given by Suspect Prasad about which the aforesaid sessions trial was pending in the Sessions Court. He further found that for future there is a question in the interests of justice also to commit the case to the Court of Sessions.

10. After the rejection of the application, the matter was carried up to Col. Sessions No. 22 of 1978 and the learned District Additional Sessions Judge, Bhatkal observed 78 (1978) that the Magistrate should commit the case to the Court of Sessions.

11. Against that order of Sessions Judge, revenue approached the Court in Criminal Revision No. 175 of 1978 where Justice V. H. Menon found that both witnesses related to separate incidents and under such circumstances, it was difficult to hold that there were cross reports in respect of the actual occurrence. However, on 25-2-1983,

learned Judge remanded the case with the Court of Sessions for disposal of the revenue charge, after considering the facts involved in the case, case and if he found that there were cross cases then only he could direct the learned Magistrate to commit the case to the Court of Sessions.

12. It was after the remand order that Sr. Sdrl. Kumar (Charge) learned that Additional Sessions Judge. He accepted the proposed order. He questioned learned Magistrate had not properly gone through the facts of the case. It was apparent that the case and played a sequence of both the incidents were different yet the matter appeared to be a trying out of one incident.

13. On detailed revision, it was argued that there discrepancies in learned Sessions Judge were contrary to the observations made by the Court who found that both the cases were totally different as was obvious from the facts and nature of occurrence.

14. In separate vide memorandum to the court, the F.I.R. was lodged by Suspect Prasad on 2-1-1977 at 7:15 P.M. about the incident which occurred in the same evening at 1:30 P.M. Narcotics Prasad and 11 others were mentioned in that report as being armed with various weapons. It was said on the life of Harinar Sharma, Narayana Prada, Pawan Varma and Ram Chandra were armed with knives and others were armed with sharp edged weapons. They inflicted injuries on Harinar Sharma with various weapons. Harinar Sharma sustained injuries by stab in his chest and abdomen. Ram Chandra was arrested.

15. In the complaint, Narcotics Prasad mentioned Suspect Prasad, Harinar Sharma, Narayana Prada, Pawan Varma and Ram Chandra and 11 others were mentioned in that report as being armed with various weapons. It was said on the life of Harinar Sharma, Narayana Prada, Pawan Varma and Ram Chandra were armed with knives and others were armed with sharp edged weapons. They inflicted injuries on Harinar Sharma with various weapons. Harinar Sharma sustained injuries by stab in his chest and abdomen. Ram Chandra was arrested.

16. According to the version of the complaint, the occurrence took place at 2:15:00 at a 20P 26 at the factory of Narayana Prasad. After committing the robbery, learned Magistrate found that only three under Sec. 147(3) IPC was made out against the

received. He further found that the two readings were distinct and separate and that they are not sufficient to sustain the case to the Court of Session.

17. Obviously, the rule is equally the more correct to be used by the court in this case of prejudice to a single defendant, standards being applied to two cases, among not all same circumstances. It is not a rule of law. High the court are separate and there is no doubt on their own evidence on second rule (Sullivan) (Gangjee v. State reported in 1988 All LJ 402).

18. The Magistrate was in a better position to have sustained the facts and evidence presented by him and given good reasons to sustain his discretion. It was open to him to sustain the case to the Court of Session after considering the evidence rule 5 (2) Cr P C in the impugned order, the learned Sessions Judge did not give any proper ground as to why he interfered with that discretion of Magistrate which was not properly examined. Such discretionary orders of the trial court should not be lightly overruled and with unless it appears that the Magistrate erred in his discretion adversely by relying on irrelevant evidence or the orders suffered from some fundamental legal error like want of reason etc. Such fundamental error in principle was not committed by the Magistrate nor his order was without jurisdiction. Thus, it was within the jurisdiction of the Magistrate. It was open to the learned in Session trial also to put forward reasons without at least the reasons springing out of the same occurrence according to the evidence.

19. In the result the impugned order is set aside and the order of Magistrate dated 30.3.1985 is restored. Interlocutory dated 27.3.1984 and 12.9.1985 are vacated hereby.

20. In the result of the case to the Court is restored as it is for a fresh disposal of the abandoned persons trial and criminal case.

B. court allowed

1988 ALL J 1 485

R. P. SINGH J.

**Rexnolds v. Dy, Director (Consolidated) (Gangjee) and another (Respondent)**

Civil Misc. Writ Petn. No. 6724 of 1973, D/12.1.1985

194. Civil P.C. (5 of 1908) O. 32, R. 12 — **Misc. becoming major during pendency of proceedings** — Is it the discretion to appear before court — Non appearance — Discretion is binding on him.

The pendency of the proceedings of O. 32 would include this as the discretion of the court is not to appear before the court after becoming major or to stay the proceedings or to regulate the same. If the minor petitioner does not appear in the proceedings after becoming major and his name is entered in the proceeding, he would be bound by the decision unless he produces or sends direct proof that he had not appeared or had not obeyed the court. 1981 All LJ 1465 (Gangjee, AIR 1979 J 232) Not on.

(B) U.P. Consolidation of Holdings Act 1954, S. 3 — A, regarding title deed of land which was described in a deed by Consolidation Officer and an illustration found was on file to indicate that the illustration had been obtained — Court put no question of non-attendance on title deed without satisfying itself that the illustration could not be said — Held, judgment allowed from joint order of law. (Para 9)

(C) Consolidation of Holdings Act 1954 — With parties — Practice and procedure — Specific paragraph of writ petition not necessary for the court to consider — A question therein to be answered or not. (Para 10)

(D) U.P. Consolidation of Holdings Act 1954, S. 3 — The allegations have concerned several title deeds regarding the land in favour of different persons, hence each title deed needs to be examined in respect of the holding — Held, title deeds were not to be taken into account of pendency of the case and title deed in each title deed could not be allowed. (Para 10)

(Para 10)

CC-0 (2018) 11 (1) 11

(B) U.P. Consolidation of Holdings Act 5 of 1954, s. 9 — A transferring her land to B — C claiming and getting title to the by A, raising objection that A having only right of enjoyment and not proprietary right transfer was not valid — Held, it was obligatory on C to contest title during consolidation operation s. 9 and that 'C' had no right to contest title deed during A's lifetime (para 11)

Cases Related	Cited/Quoted	Para
UNL AIR 1170		8
1961 AIR 1170		12
1960 AIR 1170	AIR 1960 SC 1377	11, 12
1970 AIR 1170		12
AIR 1970 AIR 1170		8

L. P. Koushika, for Petitioner: S. K. Verma and Sandeep Chandel, for Respondents

**ORDER.** — The writ petition seeks set of proceedings initiated by the transferees of Smt. Sakina Bibi for merger of her estate with the disputed plot. It is noteworthy that Mrs. Sakina Bibi had entered into deed in the year 1965 as well as in the year 1967 and the transferees had moved the consolidation officer for merger of their estate s. 9 of the U.P. Consolidation of Holdings Act. The petitioner had contested the claim of the transferees on the allegation that Mrs. Sakina Bibi had no right and title to transfer the disputed plot and that the petitioner had claimed the disputed plot on the basis of her title as well as according to her; he was the real tenant holder and Mrs. Sakina Bibi had only right of enjoyment of the disputed plot. Hence she could not transfer the disputed plot. In the meanwhile the petitioner had placed reliance upon the compromise contained in Annexure I attached with the writ petition.

2. The relationship between the petitioner and Smt. Sakina Bibi would be evident from the following pedigree —



3. The Consolidation Officer through his judgment dated 23-4-1971 (Annexure II) did not accept the claim of the transferees and ordered that the name of Smt. Sakina Bibi

should remain recorded as usual. He has also indicated that the petitioner had got no right in the disputed plot. It appears that the transferees of the petitioner had preferred appeal and the appellate authority through its judgment dated 29-12-1971 rejected the claim of the transferees on the ground that they had not obtained requisite permission under Section 5 of the U.P. Consolidation of Holdings Act, hence their title deeds were invalidation and they could not get mutation in view of the aforesaid finding the appellate court did not categorically discharge the claim of the petitioner. Therefore the transferees preferred revision petition which have been allowed by the revisional court through its judgment dated 28-7-1972 contained in Annexure III attached with the writ petition. Aggravated by the judgment of the revisional court the petitioner has approached the Court under Art. 226 of the Constitution.

4. The learned counsel for the petitioner has contended before me that the revisional court has primarily erred in recognizing the claim of the transferees of Smt. Sakina Bibi as the bona and comprehensive of the present case. According to him Mrs. Sakina Bibi had no proprietary right in the disputed plot and she could not transfer the title. He has also emphasized that various title deeds executed by Mrs. Sakina Bibi indicated that they were in respect of a part of her holding, hence the non-embodiment of permission of the Settlement Officer of Consolidation s. 5 of the U.P. Consolidation of Holdings Act and in the absence of requisite permission the revisional court has rightly erred in recognizing the claim of the transferees.

5. The learned counsel for the petitioner has emphasized before me that in view of the compromise (Annexure I) attached with the writ petition Mrs. Sakina Bibi had no proprietary right and during her lifetime or if the title she transferred the disputed plot, the petitioner had no right to put forward his claim but due to transfer or otherwise to Mrs. Sakina Bibi the petitioner got a right and in the circumstances of the present case her claim should have been accepted and in not doing so the consolidation authorities have patently erred in recognizing the claim of the transferees.

6. The learned counsel for the opposing party has submitted that the present



any person is not maintainable because the petitioner has become a party and the petitioner has not appeared before the Court through any Counsel therefore the petition was petition, the income information will should be dismissed for the ground above.

7. Second submission made on behalf of the contracting opposite parties is the petitioner case is that first, Salma Riba executed and died in favor of the contracting opposite parties in the year 1963 and at that time she had only that much area which was sold. In the year 1967 Sen. Salma Riba got more area through a reference to #124 of the U.P.C.N. And the executed testament sale deed of the area which she got later. So, as the facts and circumstances of the present case, no question of estoppel petition is 3 of the U.P.C.N. And what is that the petitioner court rightly accepted the claim of the respondent over the plot purchased by them.

8. I have considered the submissions made on behalf of the parties. In my opinion, the submission of the learned counsel for the opposite party that the area petition should be dismissed, because the petitioner after becoming major has not appeared before the Court through any counsel is without any force. The period of the petition of O. J. would release that it is the dismissal of the petitioner to appear before the court after becoming major to waive the proceedings or to complete the case. With these premises does not appear in the proceedings after becoming major and the claim is denied in the proceedings, he would be bound by the decision unless he questions or sets aside the decision and he did not do so. In this connection my attention has been drawn to the ruling reported in 1963 A.L.J. 1462. It states the affirmed ruling before the learned court for the contracting opposite party in his contention that on item 1 of the schedule. In the affirmed ruling the majority of the court came to the conclusion that the claim after becoming major had repudiated by his conduct. In the present case there is nothing to suggest that the petitioner has acquiesced or proceeded with the area petition. The provisions of O. J. 3, U.P.C. and the ruling reported in AIR 1979 All 260 Mann v. Sushil had led to the order that the submission of the learned counsel for the contracting opposite party in this regard is without any force.

9. As regards second submission of the

learned counsel for the contracting opposite parties, it is sufficient to indicate that the learned court has positively stated in accepting the claim of the contracting opposite party regarding the sale deed of the year 1967. The Consolidation Officer has indicated in his judgment dated 19/8/1971 that para No. 147, 148, 151 and 152 were taken into consideration by the learned court on the file to indicate that the petitioner had been absent and the respondent had recognized the claim of the contracting opposite party without addressing such that respondent could not be said I think that the respondent judgment suffers from patent error of law insofar as it has recognized the claim of the contracting opposite party based on the sale deed of the year 1967.

10. As regards the claim of the contracting opposite party based on the sale deed dated 17/11/1963 it is noteworthy that in paragraph 25 of the writ petition it has been indicated that respondents deeds were executed in favor of different persons later, indicated that in respect of a part of the building. Therefore, the sale deeds were held to be in this situation of persons under Section 5 of the U.P. Consolidation of Holdings Act. Unfortunately the learned paragraph of the writ petition has not been considered in the counter affidavit. Therefore the allegations in paragraph 25 of the writ petition, as to be, removed as ground 7. The period in the respondent judgment of the respondent court does not indicate that the respondent court has considered this aspect of the matter. In my judgment recognizing the claim of the contracting opposite parties on the basis of the sale deed of the year 1967 appears to be incorrect in law.

11. Regarding the contention of the learned counsel for the petitioner that Sen. Salma Riba had no capacity to transfer the property, hence she could not transfer the property, period of testament I indicate that the disputed area was allotted to Sen. Salma Riba and she was also liable to pay, rent in the Zameenar in respect of that plot and the respondent's claim of 17/11/1963 I think that the petitioner's contentions are false. If the petitioner was right in her contention, it was obligatory on her part to have contested the claim of Sen. Salma Riba during the consolidation operations. When the disputed area was sold in the petitioner or father of Sen. Salma Riba, the petitioner does not get

any right to stand the sale deed executed by Mrs. Sakina Bibi during her lifetime. The learned court held that the petitioner would be entitled to the ruling reported in 1975 AIR 11 1075 *Bakht Khan v. Shafiq Ali* and has contended that as the continuation of the present case (Mrs. Sakina Bibi had only limited interest in the plot so she could not sell the plot). In view of the ruling reported in 1980 AIR 12 582 (AIR 1980 SC 1258) *Bakht Khan v. Shafiq Ali*, *Bakht Khan* the ruling cited upon by the learned court for the petitioner is no longer good. As the petitioner did not contest the claim of Mrs. Sakina Bibi at proper stage, i.e. the proceedings under Section 3 of the U.P. Conservation of Pensions Act, he cannot be permitted to stand the sale deed executed by Mrs. Sakina Bibi on the basis of the comparison contained in Annexure I attached with the writ petition.

12 During the course of argument the learned court for the petitioner has also referred to the ruling reported in 1981 AIR 11 74 *Bakht Khan v. Shafiq Ali*. However, the learned ruling is based upon the issue of a will hence it is not applicable to the facts and circumstances of the present case. Through Annexure I the petitioner has put forward the disputed plot did not vest in the petitioner Bakht Khan. Sakina Bibi was held entitled to the plot and she was made liable to pay rent to the Defendant in respect of three plots, hence the legal issue of the disputed plot during her lifetime. It arose that the disputed plot was given to her for possession and maintenance and it was agreed that on her death or transfer the plot would revert to the petitioner's father. According to the then law, Annexure I was executed which gave Mrs. Sakina Bibi limited rights but during the case 'Sakina Bibi' operated in the name of 'She'. It was necessary for the petitioner to have asserted her rights. Moreover, the facts contained in paragraph 1 of Annexure I indicate that Mrs. Sakina Bibi was entitled to the plots as her father and her real kinsman in possession during her lifetime but would not claim transfer right of Shafiq Ali from her husband. As she was also held liable to pay rent with regard to the plots situated in her, it is to be seen from whether she would acquire any tenancy right in the disputed plot or not. It is also to be examined as to whether she acquired tenancy right under the provisions of O.P. Zamindari Abolition and Land Reforms Act under disputed plot or not. In my opinion, she did acquire right in view of the ruling reported in 1980 AIR 11 582 (AIR 1980 SC 1258).

13 During the lifetime of Mrs. Sakina Bibi the petitioner had no right and title to the disputed plot. The petitioner had claimed the disputed plot in the name of 'she' gift by her. Sakina Bibi had not established her claim before the Commissioner officer hence her claim was rejected. Inapplicable is the ruling that she did not prefer a revision petition about her claim but when the revisional court decided the revision petition in favour of the petitioner of Mrs. Sakina Bibi, the petitioner has approached the Court under Article 226 of the Constitution. In my opinion, when the petitioner did not prefer her claim before the revisional court, he could not attack the judgment of the revisional court during the lifetime of Mrs. Sakina Bibi. As the present the petitioner has not established a claim as given in the present writ petition.

14 Differently before me is that during the petitioner's lifetime, Mrs. Sakina Bibi is dead and the sale deeds executed by her in favour of the continuing opposite parties are also not valid transactions. The question arises whether any confirmation should be made with the suggested judgment at the instance of the petitioner. In the current scope of the present case the title of the Claim Sakina would also emerge in the disputed plot due to, would also deeds executed by Mrs. Sakina Bibi. The Claim Sakina is not before the Court. On the death of Mrs. Sakina Bibi the petitioner might claim the interest of Mrs. Sakina Bibi when the sale deeds executed by Mrs. Sakina Bibi in favour of the continuing opposite parties are not valid transactions. To give relief to the persons related to the plot in the disputed question of fact will have to be gone into. The continuing opposite parties (respondents) of Mrs. Sakina Bibi can also claim the property in the name of their possession for more than twenty years. Hence I do not consider it is in case where confirmation should be made with the suggested judgment of the revisional court. I have dealt with the consequences of the execution of the parties above. In such a position between the parties as to the interest of Mrs. Sakina Bibi regarding the disputed plot, claim of the respondent will be decided strictly in accordance with law.

15 In the result, there is no petition lodged in accordance demanded. I make no order as to costs in the proceedings of the present case.

Foram dismissed.

1986 A.L.J. 1 689

ON PEARASHI J

Harley (Singh) Norman Singh (Appellant) v. Mohan Lal (Respondent) — Respondent

Civil Review No. 18 of 1985 [1986 A.L.J. 1 689]

**UP Urban Buildings (Regulation of Letting, Rent, and Eviction) Act (22 of 1975), S. 1(3) (Exp. Lc) — Words — Reported to — Interpretation of — Date for eviction — Results of Act — Enforcement for — Building though not ten years old, on date of sale, comprising ten years during pendency of litigation — Provisions of Act are construed "period of ten years" — Determination of**

The premises which was not ten years old on the date of the ten and was exempted from the operation of the new Rent Act can be governed by it if ten years expired during the pendency of the litigation. (Para 3)

When the ground floor in respect of which the suit for eviction was filed was reported to have been completed in Jan. 1975 by the owner and the period of ten years expired from the date of completion is covered during the pendency of the litigation and the tenant paid rent up to the date of eviction, eviction would be restricted to the premises of the Act and would not be liable to be evicted notwithstanding that the last agreement of the building was made in 1974 where the owner had completed and the tenant had to report the date of completion to the Municipal Board. 1984 A.L.J. 12 (SC) Followed. 1983 A.L.J. 371 and 1982 A.L.J. 376 (SC) Dising. (Para 3)

A tenant who has constructed a building is supposed to report actual date of completion. The actual date of completion which is known to and is attested by the plaintiff/tenant comes to fix the date of completion, simply because it was so reported to the local authority. The dominant purpose of the Act, 1975 was to protect the interests of the tenants and therefore, Act is to be interpreted keeping this purpose in mind.

\*Against judgment and decree of S. B. Maheswari, J. in A.D. No. 148 of 1985, Dr. S. B. Maheswari, J.

When the legislature intended to protect tenants, then it will be presumed that, that the legislature would give an overriding effect to the fiction in the definition of the tenant. (Para 4)

The words "is reported to" according to (1) (a) of Explanation 1 to sub-section (2) of S. 2 deserves a liberal construction which is consistent to the object of the Act. If the words are reported to are construed literally then these words may be read narrowly as, is reported to or attested by the owner of a building. So the date of completion cannot be taken to be the date of completion of the date of completion is reported to or attested by the owner of a building proceeds the date of possession. When the plaintiff himself attested that the portion under tenancy was constructed no earlier than the date of possession, then there would be no obligation to hold that the building was completed on a later date, i.e. the date of agreement and thereby denying the protection to the tenant which is given by the Act, 1975. (Para 4)

**Case Reported Overruled Part**  
1984 A.L.J. 143 AIR 1985 SC 417 1 5  
1982 A.L.J. 371 4  
1983 A.L.J. 376 AIR 1984 SC 128 (3) 4

S. B. Maheswari, J. H. Singh for Petitioner, Respondent; P. B. and Kapur Singh for Respondent

**ORDER —** Being a very interesting question, the revision is filed by the tenant respondent against the judgment and decree of S. B. Maheswari, J. in the learned IV Additional District Judge Varanasi (briefly the A.D.J.) arising from the suit filed by the landlord (applicant) for recovery of possession after expiration of the tenancy and for recovery of arrears of rent, interest profits and other charges. Briefly the facts are that the plaintiff claimed that ground floor was completed in Jan. 1975 and the first floor was completed in 1976 and thereafter the lease agreement was made. The plaintiff had purchased the site of the proposed construction with certain construction related documents (M.P. 1974) from Chitani, his son and his wife and then carried out construction. The ground floor was completed in Jan. 1975 and the construction of the first floor was carried out

in 1976. On 29-11-1980 the plaintiff gave a notice to defendant having demanded a rent of Rs. 1000 from 1-1-1979 and having threatened that tenancy. The rent was refused by the defendant, denying the continuance of the tenancy and that the house was tenanted only of the ground floor. They also averred that the parties under the tenancy is governed by the L.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The next day the Act, 1972. It was contended that the rent for the period up to 31-3-1980 had been paid to the plaintiff. This is how the defendants denied their liability of payment. The rent was then decided by the learned Additional District Judge Varanasi vide order dt. 25-8-1982 dismissing the suit with costs to the defendant No. 1 who alone was found to be the tenant. Then the plaintiff filed revision before the Court. All the findings of the lower court except the one that the Act, 1972 applied to the parties under tenancy were confirmed by the Court vide order dt. 28-4-1983 and the case was sent back to proceed with finding as to whether the Act, 1972 applied to the two parties. Then the suit was decided by the Additional District Judge, Varanasi by the impugned order dt. 2-1-1985 dismissing the suit of the plaintiff for recovery of the defendant and for recovery of rent and other charges.

3. Approved by the said order of the learned A.D.J. the defendants have filed the counter version. I have heard Mr. C. N. Singh learned counsel for the defendant and Mr. Rajendra Prasad learned counsel for the plaintiff. Approach of Mr. Singh is very clear and simple. What he expects that before the trial court in the first round, the plaintiff categorically stated that the ground floor was constructed in 1975 and that the first floor became complete in 1976. He says that the trial court vide order 25-8-1982 clearly held that the plaintiff had for use only ground floor in the impugned order dt. 25-8-1982 the learned A.D.J. clearly observed that all the findings of the learned predecessor except the findings on para No. 1 were confirmed in revision by the Court and the case was sent back to the predecessor with a direction only to decide the following points :-

1. When was the construction in question actually completed?

2. What is the date on which the first construction relating to the building in question came into effect?

3. Whether or not at the first instance, order in relation to the building in question, the date on the period when the building was actually completed is rendered immaterial?

4. Whether the L.P. Act 12 of 1972 is applicable to the building in question?

Therein, learned A.D.J. found that the Act of 1972 did not apply to the suit premises. The findings of the learned predecessor given in the first round on other issues having been confirmed, the learned A.D.J. accepted the case of the plaintiff and decreed the suit for recovery of the defendant.

5. The main question for consideration is whether the Act of 1972 applies to the suit premises. The suit premises in this case is the ground floor. As it was so found by the learned A.D.J. vide order dated 25-8-1982 and that finding was not disturbed by the Court in revision under the order dt. 28-4-1983. The learned A.D.J. vide order dt. 25-8-1982 also found that the ground floor had been constructed in 1975. The finding too also became final after the decision of the Court dt. 28-4-1983. The argument of Mr. Singh is that the finding that the defendants were tenants only of ground floor which was constructed in 1975, having become final the provisions of the Act, 1972 clearly attracted to the suit premises in view of rule laid down in the case of *Vijaya Kumar v. Mangal Sanyal*, 1980 AIR 907, 1980 A.L.J. 1030 that the provisions which was not ten years old on the date of the suit and was not superseded by the operation of the new Act can be provisioned by a 10 years period during the pendency of the litigation. The Supreme Court view of the new case the mandate is, building becomes ten years old to be reckoned from the date of completion of the floor. Act would become applicable. The suit for recovery of the defendants was filed by the plaintiff against the defendants in 1972 (1981) and the period of ten years expired during the pendency of the entire revision, which was filed on 1-1-1983. Legislature having remained pending even after the expiry of 10 years. So, Singh relying on the case of *Vijaya Kumar* type of situation that the Act, 1972 is applicable to the suit premises and the defendants were not liable to be evicted, as the finding of the trial court under the order dt. 25-8-1982 that no rent was due up to the date of notice has become final.

8. On the other hand, the submission of Sir Bagnall Prasad is that it is undisputed that the assessment of the building was made in the year 1976, when the entire building was completed, relying on Explanation 1 to section (2) of S. 2 of the Act 1972. Sir Bagnall Prasad supports this on the basis of a building which is subject to the assessment and, therefore, the date on which the first assessment thereof came into effect, shall be deemed to be the date of completion of the building. His argument is that no date of completion was reported by the plaintiff to the Municipal Board and, therefore, only the date of assessment made in respect of the building shall be taken to be the date of completion thereof. If a plaintiff has to come to court simply use the language of the statute and show it is undisputed, then full effect be given to that without reporting any, foreign words at all. The provision explains a rule of law of Explanation 1 to section (2) of S. 2 of the Act 1972 says that the witness as to month of the date that is deemed to be the date of completion and this provision makes clear that either it will be a date when the completion was reported to the local body or, the owner of the building or the date which was reported by the local authority having jurisdiction with own inquiry and in the case of a building subject to assessment, the date on which the first assessment thereof came into effect shall be deemed to be the date of completion of the building. There being no date of report to be the date of record by the local authority. Sir Bagnall Prasad urged that the building being the concrete subject to assessment, only the date of assessment will be the date of completion in the case. He is not persuaded by this argument made on behalf of the plaintiff. The construction date of the plaintiff before the trial court was that the ground floor which was held to be the one by the plaintiff, was constructed in the year 1975. The question is if the actual date of completion has been reported to the local authority but if the date of actual completion is known to and known by the plaintiff, then whether the year will decide the date of completion taking into account the actual date as asserted by the plaintiff or by statute, as stated by it (of Explanation 1 to section (2) of S. 2. The argument by Sir Jaugh is that when actual date of completion is stated by the plaintiff then the court will not give any

consideration to the facts and that the house will not override the rule. The real fact as was stated by the plaintiff before the trial court is that the ground floor which is in dispute was constructed in Jan. 1975 and on face of this report case Sir Jaugh argued that the date of assessment which is made in the year 1976, cannot be held to be the date of completion. He submitted that the submission of Sir Jaugh. The question is when it is to be reported to by the owner of a building to the local authority? The answer is simple that a person who has constructed a building is supposed to report actual date of completion. The actual date of completion which is known to and is asserted by the plaintiff will not cease to be the date of completion, simply because it was not reported to the local authority. The dominant purpose of the Act, 1972 is to protect the interest of the tenants and the whole Act is to be interpreted bearing the purpose in mind. When the legislature intended to protect tenants, then it will be presumptions to think that the legislature would give an overriding effect to the house as the document of the owner. In the situation of a land that has been at that time, if the house is given an overriding effect over the actual date of completion as asserted by the plaintiff, then the tenants will be deprived of the protection which the legislature sought to give to them. In any case the words interpreted carrying out of Explanation 1 to section (2) of S. 2 describes a literal construction which is consistent to the object of the Act. If the words as proposed to be inserted literally, then in my view these words may be read meaning as it reported to or asserted by the owner of a building. The literal construction which is suggested by Sir Bagnall Prasad of the words is proposed to describe cannot be accepted, because that is contrary to the object of the Act 1972. As the date of assessment cannot be taken to be the date of completion, if the date of completion reported to or asserted by the owner of a building provides the date of assessment. When the plaintiff himself asserted that the property under litigation was constructed in an earlier date than the date of assessment, then there would be no presumption to hold that the building was completed on a later date i.e. the date of assessment and thereby depriving the protection to the tenants, which is given by the Act, 1972.

There was conflict in the data reported to or received by the owner of a building because if so all the owner had reported the date he would have reported the date which he wanted to be the date of completion.

Reliance was placed for the plaintiff on *On Petition Cases*, AIR 1957 SC 128-29 (1957 All LJ 174). The facts of this case are entirely different. In para 4, the Supreme Court stated the facts thus:—

The appellant sought the benefit of S. 79 of the Act on the ground that if the date of occupation was taken to be the date of the completion of the shop, the date of completion elapsed during the pendency of the appeal before the High Court, the Act would be applicable.

From the facts as stated in para 4, it is also clear that what happened first was that the first assessment of the shop took place on 1st April, 1946. Taking the date of assessment as the date of completion makes the meaning of Explanation I to section 12 of Sec 2 of the Act, 1972 the contention of the appellant that he was entitled to the benefit of the Act, 1972 was rejected. So the question before the Supreme Court was whether the tenant could prior the date of occupation invoke the benefit of the Act, 1972. The date of occupation is a matter from 12 of Explanation I to section 12 of Sec 2 can be ascertained only when there is no doubt that it is ascertained to or the date recorded by the local authority and the date of assessment. When such no-doubt is available then only the date of completion shall be determined by referring to the date of occupation. As the date of assessment was 1st April, 1946 was available the Supreme Court took the view that the provisions of Explanation I to section 12 of Sec 2 were clear enough regarding no interpretation and the date of assessment being available the date of completion could not be taken to be the date of completion. So the fact of that case was entirely different from the facts of the present case. In this case has been employed by limited context for the plaintiff. Thus for the plaintiff, the learned court applied to the case of *Dada Nandan v. 15 Addl District Judge* 1983 All LJ 773. The case of this decision the court is applied to the instant case on account of date passing from the date the information made by the

respondent No 2 when it is a whole understood that the report about the completion of the shop in question had been made either in the month of May or June 1973. Learned judge before whom the case was, observations of the respondent was to be ignored and the case was to be decided on the basis of other evidence produced by the parties then apparently it was a case where there was nothing on the record to indicate that any report about the completion of the shop or completed had been made or others as recorded by the local authority and in the view of the court it is the date on which the first assessment is respect of the shop in question came into effect which would be the date on which the construction of the shop shall be deemed to have been completed. Then the learned judge asked whether May or June 1973 when the report of completion of the construction is said to have been made is taken as the actual date or 30-6-1973 when the first assessment was made is taken to be the actual date the result is the same, namely that in the year 1973 when the case was, assessed ten years had not elapsed from the date on which the construction of the shop shall be deemed to have been completed and therefore, the provisions of the Act were not applicable to the shop. In the instant passage in the case of *Dada Nandan* (supra) was merely different and the real decision cannot be taken into and to decide the case of the parties before me.

5. The ground floor of the building having been completed in Jan. 1973 according to the plaintiff himself and this having been in the vacancy of the respondent, the provisions of the Act 1972 clearly apply in the facts of the instant case in view of the decision of the Supreme Court in *Vinod Kumar* (1984 All LJ 103) except in the period of ten years to be reckoned from Jan. 1973 elapsed during the pendency of the litigation. The defendant having paid rent up to the date of notice according to the real court, I hold that they are entitled to the provisions of the Act, 1972 and they are not liable to be evicted.

6. In the result, the tenant is entitled and is allowed with costs and the judgment and decree 12/3/1985 of the learned IV Additional District Judge are set aside.

Revenue allowed.

1996 A.L.J. 1, 1 493

O P SAKENA J

Haskinell Appellants v. Kahan Ltd  
Haring, Ltd-Defendants Respondents

First Appeal No 25 of 1978 D. 5-11  
1978

(14) U.P. Ceiling on Property (Temporary  
Provisions as to Transfer) Act (6 of 1971,  
S. 35) (as amended by U.P. Act 45 of 1972) —  
Agreement to sell immovable property —  
Subsequently restriction imposed on transfer  
of such property viz. to obtain permission  
from Commissioner — Sale deed executed  
without obtaining permission by the Vendor  
cannot be good unless it is proved that no  
restriction on transfer of property was there  
at the time of agreement of sale.

Agreement to sell immovable property  
was entered on 6.3.1971. Subsequently, a  
restriction on transfer of such property was  
imposed by S. 3 of U.P. Ceiling on Property  
(Temporary Provisions as to Transfer)  
Ordinance 1971 which came into force with  
effect from 11.7.1972. In view of S. 3(a) the  
application for permission had to be given by  
the Vendor and not the Vendor. A sale deed  
was executed by the Vendor without obtaining  
the permission of Commissioner as  
contemplated by S. 3(b).

Held that the sale deed could not be given  
effect to. It could not be said that as there was  
no restriction on transfer of immovable  
property at the time of the agreement so there  
could be no statutory duty on the part of  
Vendor to obtain the permission. The  
imposition of restriction on transfer of  
immovable property after the agreement did  
not make any difference. It was the duty of  
the Vendor to obtain the required permission.  
If there was any omission at the time of the  
agreement itself, it would be the duty of the  
Vendor to obtain such permission even if the  
provisional restriction had been imposed after  
the agreement. The permission had to be  
obtained at the execution of the sale deed  
could be done only after the permission  
Florida under the provisions of S. 35 of U.P.  
Act No. 26 of 1972 only the vendor could  
apply for permission. Also there was no

pleading by the Vendor that after the  
restriction on the transfer of immovable  
property were imposed, it was agreed between  
the parties that the Vendor would obtain the  
permission. (Para 38 44 to 47)

(15) Ord P C (5 of 1968), O A R. 5(1) —  
Findings — Application dismissed — No  
costs.

The relevance of the pleadings is not  
controversial. It can be shown to be erroneous  
to refuse to bring an application to whom it was  
made had not acted to his detriment. AIR  
1980 SC 260 Ref. on. (Para 31 52 53)

(16) Contract Act (6 of 1972), S. 38 —  
Contemplation of sale of immovable property —  
Normal presumption is that time is not  
essence of contract.

The feature of a period within which the  
contract has to be performed does not make  
the stipulation as to time the essence of the  
contract. If the contract relates to the sale of  
immovable property, it will be normally  
presumed that time was of the essence of the  
contract. Whether such a conclusion exists in a  
particular case will depend on the content of  
the parties and circumstances of the case.  
Thus, where the Vendor stated a figure to  
Vendor saying that he would sign it in deed  
within 10 days of the permission required under  
certain Act for the transfer and implicitly  
warranted execution of time it would not mean  
that the time was of the essence of contract.  
(Case law discussed)

(Para 48 51 54 55 56)

(17) Contract Act (6 of 1972), S. 54 —  
Contract — Doctrine of frustration — Does  
not apply to self-induced frustration.

The doctrine of frustration in respect of a  
contract does not apply to a self-induced  
frustration. Thus, where the Vendor who did  
not apply to the Commissioner for permission  
to alienate immovable property could not plead  
frustration of contract on ground of absence  
of permission for transfer. AIR 1980 SC 210  
Ref. on. (Para 74 75)

Case Reported	Chronological Para
AIR 1984 AC 288	49 51 74
AIR 1978 AC 498	51 55 56
AIR 1977 SC 800	51
AIR 1971 SC 576	73
AIR 1970 SC 548	47

AIR 1967 SC 610	78
AIR 1967 SC 660	41, 42
AIR 1968 SC 775	39
AIR 1967 AC 1 1957 AIR LJ 264 (196)	19
AIR 1968 SC 695	15
AIR 1964 SC 44	72
AIR 1968 PC 387	45
AIR 1965 PC 65	60
1965 AC 386, 38 ALJ Ch 259 162 LJ 654	
Stirling v. Kynile	62

N. A. Rams, for Appellant

**JUDGMENT.** — This is an appeal against the judgment and decree dated 17th May 1973 passed by the Additional Civil Judge, Polandzinski dismissing O.S. No. 148 of 1970 and Civil Judge's Order for specific performance of an agreement of sale and decreeing the sum for recovery of Rs. 4,000/- as interest money with interest at 6% per annum. The parties were directed to bear their own costs.

2. *Background to facts.* On 13 Jan. 1966, Polandzinski was founded as agent at the foot of the plant.

3. The Uttar Pradesh Ceiling on Property (Temporary Restrictions on Transfer) Ordinance, 1970 came into force with effect from 11th July 1970. Sec. 3 provided restrictions on transfer during operation of three months from the commencement of the Ordinance. On 11th Sept. 1970 the Defendant was replaced by U.P. Ceiling on Property (Temporary Restrictions on Transfer) Act, 1971. U.P. Act 26 of 1971. U.P. Ceiling on Property (Temporary Restrictions on Transfer) Amendment Act, 1972. U.P. Act 26 of 1972 came into force on 11th Dec. 1971. The period was extended up to Jan. 31, 1973. The period was further extended and the restrictions continued even on 28th Feb. 1973.

4. Plaintiff filed the suit for specific performance of the agreement of sale dated 13/7/62 executed by defendant No. 1 with his wife agreeing to transfer the disputed house for a sum of Rs. 25,000/- out of which a sum of Rs. 5,000/- was paid in earnest money. The sale deed was to be executed by 15th Feb. 1973. The plaintiff's case was that defendant No. 1 had been under undue compulsion from the Commissioner for executing sale deed but he did not do so. On 17/2/1973

plaintiff sent a notice to defendant No. 1 to complete the sale in 14 days. Defendant No. 1 was in the office of Sub-Registrar, Polandzinski and gave applications there. On 1-6/73 defendant No. 1 received agreement of sale Rs. 50/- in favour of defendant No. 2. Defendant No. 1 also gave possession over the house to the defendant No. 2 on 4. The agreement is said to have been executed in contemplation of an earlier agreement dated 17/1/72 vide copy, Ex. B-1. The plaintiff's case was that the agreement dated 17/1/72 was forged, fraudulent and void. It was said that defendant No. 2 is a very well known and the earlier agreement of sale in favour of the plaintiff on 14-6/73. Plaintiff was aware that copies Ex. 17 to 21 the defendant has some of them given wrong copies. The plaintiff claimed that he has been and is ready and willing to perform his part of the contract and defendant No. 1 committed breach of the agreement when he did not obtain any permission from the Commissioner and defendant's contrary sale deed in breach of the plaintiff's appeal.

5. The suit was contested by defendant No. 1 with the plea that the agreement dated 17/1/72 was duly executed by him in favour of defendant No. 2 and that a Sub-Mohar that subsequently Akash Mohar, at one along with the plaintiff and the defendant No. 1 that the defendant did not want to get the sale deed executed in terms of the agreement dated 17/1/72 and he could execute an agreement of sale in favour of the plaintiff that following Akash Mohar, defendant No. 1 executed the agreement of sale in favour of the plaintiff that defendant No. 1 stated Akash Mohar working back the earlier agreement of sale and sale for 25th but the latter told him that the earlier agreement of sale was with the other defendant and he would bring it in 10 days and take back the money that defendant No. 1 made the sale and willing to execute the sale deed in favour of the plaintiff that the plaintiff was not ready and willing to get sale deed executed. The plaintiff made various efforts to obtain specific performance of the house that the plaintiff obtained a temporary injunction order in his favour but the back of defendant No. 1 which he knew that defendant No. 1 was



himself living in the house. That on coming to know about the agreement, defendant No. 1 accused an agreement before the Joint Commercial Police Officer and the defendant order was submitted that defendants Nos. 2 to 4 procured to him in order to deprive him of the sale in favour of the plaintiff while the time to exercise the sale deed in terms of the agreement of sale dated 17.1.72 had not expired. That plaintiff and Allah Mehar had received defendant No. 1 when they had been that defendants Nos. 2 to 4 did not want to purchase the property in pursuance of the agreement dated 17.1.72 that there was a quarrel between the plaintiff and defendant Nos. 2 to 4 after the latter came to know about the agreement dated 3.4.73 in favour of the plaintiff, that on 3-4-73 the defendant No. 1 executed another agreement of the sale in favour of defendants 2 to 4 that the plaintiff had full knowledge of the agreement of sale dated 17.1.72 that he committed default in getting the sale deed executed as he became on 28.1.73 in accordance with the terms of the agreement that the earnest money was collected and the plaintiff was not enabled to get back the same and that sum for specific performance of the agreement stands liable to be returned.

8. Defendants Nos. 2 to 4 accused the suit with the allegation that plaintiff was well aware of the agreement of sale dated 17.1.72 that a sum of Rs. 500/- was paid as earnest money at the time of the agreement dated 17.1.72 and it was agreed that the sale deed would be executed by lock July 1973 that a sum of Rs. 10,000/- was paid as earnest money at the time of the agreement of sale dated 3-4-73 and the latter was speedily to pay by 15th July 1973 by which date the sale deed was to be executed that on 3-4-73 defendant Nos. 2 to 4 obtained possession over the house in part performance of the agreement of sale and they are entitled to the benefit of Sec. 55 A of the Transfer of Property Act that there was collusion between the plaintiff and defendant No. 1 and the latter executed the agreement dated 3.4.73 in favour of the plaintiff, that the said agreement was binding on the defendants that the plaintiff is not entitled to get the specific performance of the agreement of sale on the basis of the same and that defendants Nos. 2 to 4 are entitled to obtain a sale deed in pursuance of the agreement of sale dated 3-4-73.

7. Plaintiff filed repudiation in the aforesaid suit and filed by the first case of defendants.

8. In the repudiation filed by the written statement of defendant No. 1 it was said that plaintiff never was re-defendant No. 1 along with Allah Mehar that the plaintiff had no knowledge of the agreement dated 17.1.72 that the said agreement has been fabricated and introduced subsequently that the agreement dated 3-4-73 executed by defendant No. 1 in favour of the plaintiff is fraudulent and collusive that possession could only have been obtained by defendant No. 1 and the plaintiff could not obtain the possession of the sale in the property vested in favour of defendant No. 1 and that there was a question of returning the earnest money.

9. In the repudiation filed by the written statement of defendant No. 2 to 4, it was said that the agreement dated 3-4-73 was fraudulently executed in order to defeat the agreement in favour of the plaintiff that defendant Nos. 2 to 4 and Allah Mehar are in collusion with each other that the agreement dated 3.4.73 executed by defendant No. 1 in favour of the plaintiff is legally enforceable against the defendants Nos. 2 to 4 as well and that the plaintiff is entitled to specific performance of the agreement of sale dated 3-4-73.

10. On the application of the plaintiff Allah Mehar was brought on the record as defendant No. 5.

11. Defendant No. 5 supported the case of defendants Nos. 2 to 4 regarding the execution of the agreement of sale dated 17.1.72 and 3-4-73 but he did not admit joining any suit in the execution of the agreement of sale dated 3-4-73 in favour of the plaintiff.

12. The Additional Civil Judge accepted the plaintiff's version regarding the due execution of the agreement of sale dated 17.1.72 executed by defendant No. 1 in favour of the plaintiff and that the transaction was collusive and is not binding on the remaining defendants. He did not accept the version of the remaining defendants regarding the due execution of the agreement of sale dated 17.1.72 and held that it was a fortuitous document. He however found that the plaintiff was not ready and willing to perform his part of the contract as he did not take

performance from the Commission for the stated out of the sale deed. He received the plan that was annexed to the contract. In view of the findings, he decreed the suit for specific performance of the agreement of sale and granted a decree for refund of the earnest money. He decreed the parties to bear their own costs. Hence the appeal.

13. Dr. Mehrshad Hafshadpour for the appellant challenged the findings that it was the date of the appellant's return obtained the permission from the Commission and that as the findings show the permission, it should be decreed that he was not ready and willing to perform his part of the contract.

14. Dr. Qasr Pezeshki, Advocate appearing for the opposing respondents Nos. 2 to 4 challenged findings that there was not the return of the commission and the agreement dated 17.1.72 was a handwritten document. He also took the plea regarding the frustration of the contract.

15. The first plea for disagreement in the appeal is as to whether the agreement dated 17.1.72 was a written, typed and undated document.

16. The original agreement is set on the record. It was filed before the First General and Division Officer, Bahadshahr and the second was submitted to prove the document. The agreement was written by some one who defendant No. 1 on a stamp of Rs. 2.00 pasted in the name of defendant No. 3. Afshadpour D.W. 3 claimed that he was one of the original witnesses. Defendant No. 1 agreed to transfer the house in favour of defendant No. 2 and for a sum of Rs. 25,000. A sum of Rs. 500/- was paid in earnest money. The balance of the sale consideration was to be paid at the time of the execution of the sale deed. The sale deed was to be executed by (Sh. Ali, 1973) D.W. 1 Kahani Lal Marag, D.W. 4 Mohd. Rind (D. 2) and D.W. 3. Defendant No. 1 in the three witness statements to the commission, I shall refer to their evidence briefly before coming to the circumstances which would show that the agreement of sale dated 17.1.72 is a handwritten, typed and undated document.

17. D.W. 1 Kahani Lal Marag stated that he wrote the agreement dated 17.1.72 after

receiving Rs. 500/- as earnest money at his house. The agreement was written in 9.30 a.m. Besides him, Mohd. Hamed Bahadshahr, Dost Mohammadi and Allah Mehr were present. On the previous evening, he and Mohammad Hamed had gone to the house of Shadab, a person who had got a draft prepared. It was a Sunday and nothing was available. The sale of the agreement was being given for the last three days. On this day, the agreement was written. Allah Mehr brought the stamp. He did not know from where the stamp was brought. He has the draft ready with him and it was not necessary to go to any place. He did not know if he had mentioned the boundary of the house about which the agreement was executed. After the Allah Mehr came to him along with the plaintiff and told him that he did not want to purchase the house, then plaintiff and defendant No. 2 Mohammad Hamed got relaxed and that he should enter into an agreement of sale with the plaintiff. He further told him that he was either concerned of the agreement of sale had given me. He stated that as he was the one of the purchasers, he should have no hesitation in accepting his words. He executed the agreement of sale in favour of the plaintiff in the presence of Allah Mehr. Allah Mehr was not present with him the agreement dated 1.4.73 was executed. At that time Mohammad Hamed, Bahadshahr and Dost Mohammadi were present along with 1 or 2 persons whose names he did not know. Inquisitor asked as to why it was not mentioned in the agreement dated 1.4.73 that Allah Mehr did not want to purchase the house in pursuance of the agreement dated 17.1.72. He replied that he did not get a moment as Allah Mehr had told him on 3-7-72 that he intended defendant did not want to purchase the house. He was conscious that Allah Mehr had given wrong information about the matter defendant was concerned. He stated that Allah Mehr had decreed him earlier. He stated that he had no meeting with Mohammad Hamed and others till 28.2.73 even though these persons lived at Bahadshahr. In para 5 of the witness statement, he has it a word that he tried to contact defendant Nos. 2 to 4 but they were not at Bahadshahr at that time and the contacting defendant could not contact them. In his statement, he said that he did not consider a person to meet defendant 2 to 4. He asked for the agreement of sale dated 17.1.

To from Allah Mohiut and also agreed to refund the earnest money, but she then told him that he should not worry, and he would receive her agreement of sale, and take back the money. He met Allah Mohiut after two months. He met her 3 or 4 times and asked her for the return of agreement of sale dated 15.1.73 but she never gave the same reply. He went to Khana on 20.3.73 to find out about the application for possession; he found that no application was given by the plaintiff. He met defendants Nos. 3 to 4 on the same day and told them about this. He executed the agreement dated 24.4.73 in favour of defendants Nos. 3 to 4 as he needed money and no possession had been obtained.

38. DW 4 Mohd. Hamed Asghar regarding the two agreements of sale dated 17.1.73 and 14.1.73. The talk regarding the agreement dated 17.1.73 took place two days earlier. On this day, 1973 he went to see the house along with Allah Mohiut. On 14.1.73 he and the other three defendants went to Khatun Lal Hameed and had talks with her. The talks finished by about 4 or 5 p.m. The agreement dated 17.1.73 was executed in the house of Khatun Lal at about 9 a.m. On the previous evening, he and Allah Mohiut had gone to Shadon person writer for getting a draft prepared. He did not remember if the draft was in Urdu or Hindi. Other two houses had not gone to the house of Shadon at about 4 or 7 p.m. He had said earlier that the talks had finished by about 4 or 5 p.m. He had got the draft prepared from Shadon person writer sometime in time. He had to go to Hapur in connection with his rubber business. He put chamberlains and children in one Hapur and brought the articles and truck. He did not go to Hapur for this purpose every day but he had to go once in a week or two weeks. As he had to go to Hapur on 17th January, he got the draft of the agreement prepared on the previous evening. On 17th January he and Allah Mohiut were in the house of Sarah Chandra Sharma and brought the stamp. According to DW 3 Khatun Lal Hameed, only Allah Mohiut had gone to bring the stamp. The stamp was purchased at the name of Allah Mohiut. It was Allah Mohiut who signed the square of the stamp vendor and not he.

He had no meeting with defendant No. 1 between 15.1.73 and the execution of the house in favour of the plaintiff. The after talk was made on 20.3.73. (Ex. B1) is the copy of the application dated 20.3.73 given by defendant No. 1 for the cancellation of the application order. (Ex. B2) is the copy of the order dated 20.3.73 whereby the application order was cancelled in the presence of the plaintiff and Shadon. The judge found that for Mrs. Khatun Lal Hameed fourth day prior to the application dated 20.3.73. He had no talk with her earlier than only Day Sultan used to take place. The talk took place regarding the sale of the house. Allah Mohiut told her about a month prior to the execution of the agreement that he did not want to take the house but she did not tell him about the agreement in favour of the plaintiff. He had no knowledge of the agreement of sale in favour of the plaintiff prior to 24.73. There was no quarrel between him and the plaintiff regarding the said agreement of sale. In para 1 of the additional plea of the writer Shadon filed by defendant No. 1 there was a reference to a quarrel between the plaintiff and defendant No. 4 when the latter came to take back the agreement of sale in favour of the plaintiff.

39A. DW 3 Khurshid Alam proved the execution of the agreement of sale dated 17.1.73 as it has signature and stamped witness. He stated that the agreement of sale was executed at the house of Khatun Lal. The agreement was copied from a hand-prepared version. The witness was a partner of defendant No. 2 Mohd. Hamed as per business in 1973. He was Chairman of the Municipal Board and in 1973 he had given a loan of Municipal Board and was brother of defendant No. 2. He stated that the agreement was read over after it was executed. When an agreement is copied on the basis of a draft, it is the draft which is read over first and finally approved before the agreement is copied. The talk of an agreement of sale did not take place in his presence. He did not remember if the agreement was put down with a chamber pot or with a pen and ink. He did not remember if a Sangladhi stamp was affixed to the same. He stated that he became a witness of a handwritten document and came forward to make a false statement on account of his close relationship with defendant No. 2.

19 D/W 1 Khatun Farid was concerned to corroborate the version of defendant No. 1 that on 5/1/92 plaintiff and Allah Mohar came to him and told him that the defendant did not want to purchase the house and he could not accept the agreement of sale in favour of the plaintiff. He stated that Allah Mohar had told the defendant No. 1 about the earlier agreement dated 17/1/71 with Mohd. Iftak and he had given to Allah Mohar had taken him to the house of Khatun Lal Naring so he was going there to persuade her for another agreement of sale. The witness told Khatun Lal Naring that as Allah Mohar was not prepared to purchase the property he should give it to a plaintiff. He did not remember the month or the place. He believes remember it was the beginning or the end of 1972. He knows English month. He is a teacher at a Madrassa School. He stated that he came here in a deposit before he brought to her accompanied to the place of Khatun Lal Naring.

20 The Additional Civil Judge has rightly observed in giving reliance on the statements of D/W 2 Khatun Farid and D/W 3 Khairul Alam Tiber are discrepancies in the statements of D/W 1 Khatun Lal Naring and D/W 4 Mohd. Iftak. There are however circumstances which are very material—

Firstly the agreement dated 17/1/71 is said to have been written by defendant No. 1 Khatun Lal Naring. The agreement dated 5/3/72 and 1-4/73 is mentioned in the course by the parties. There is much time in the statement that no professional advice was made to write a document in a book and therefore the process himself had written the agreement.

Secondly the stamp of the agreement of sale was in the name of Allah Mohar. Defendant No. 2 Mohammad Iftak and defendant No. 3 Khairul Alam Tiber are not involved. Defendant No. 4 Khatun Mohammod is also close to them. Defendants 2 to 4 had obviously little share in the house. They wanted to purchase the house and had the stamp been purchased on 17/1/71 the stamp would have been purchased in the name of Mohd. Iftak who was then accompanied Allah Mohar for purchasing the stamp. What is more probable is that at the time the

agreement was fabricated, no stamp of 17/1/71 could be available and Allah Mohar had a stamp of that date. The stamp was therefore obtained from him and he was fraudulently passed on one of the prospective vendors.

Thirdly in the agreement of sale dated 17/1/71 side copy, the No. 1 was fraudulently mentioned—

‘Mohd. Iftak No. 1’

In the normal course there is no record of such a name in the agreement of sale. The record was deliberately made because it was known that the agreement was being forged, fabricated and used later.

Fourthly the statement of D/W 1 Mohd. Iftak regarding getting the date prepared from Bhatia position is not correct as he had to go to Papan and day date had proper evidence that the agreement being executed in the course he would have postponed his visit to Major by a day and the agreement could have been executed in the Tishahat.

Fifthly in the agreement of sale dated 5/3/72 side No. 1, no mention was made of the agreement of sale dated 17/1/71 or the representation made by Allah Mohar who is said to have gone along with the plaintiff and said defendant No. 1 that the premises consist of the agreement of sale dated 17/1/71 did not want to purchase the property. There is no reason why defendant No. 1 should not have contacted the necessary defendants 2 to 4 according to para 5 of the additional plea of the witness statement filed by defendant No. 1 he could not contact the defendants 2 to 4 as they were not at Bhatiahat. The statement of D/W 1 Khatun Lal Naring and D/W 4 Mohd. Iftak, however show that defendants nos 2 to 4 were very much Bhatiahat. The entire story about the representation made by Allah Mohar to defendant No. 1 at a meet, and full story. No reasonable person could have acted on the representation made by Allah Mohar without any reference to defendant No. 2 to 4. It was not mentioned in the agreement dated 5/3/72 that it was the second agreement.

Sixthly, had Allah Mohar made any representation to defendant No. 1 he would have obtained the original agreement of sale but he did not do so in the ground that it was

with defendants 3 to 4. As a reasonable and prudent person defendant No. 1 could not have accepted the assurance of Adish Mahab that he would return the agreement with altogether and the other 30 letters contained defendants Nos. 2 to 4 who were in possession of the agreement. Had there been any such previous agreement, he would have certainly come to it.

Secondly, the fact of the 900/- was not referred to the prospective vendors of the agreement of sale dated 17.1.72 or to 3.1.73 or on any date subsequent thereto. Ex. B9 is a receipt given by Adish Mahab on 17.1.72 on receipt of Rs. 335/- from defendants Nos. 2 to 4. The receipt also appears to be a false one document.

Rightly, no action was made in the agreement of sale dated 3.4.73. Ex. B4 that the agreement was being executed in representation of the agreement dated 17.1.72 as Adish Mahab was no longer interested in purchasing the house. The earlier agreement of sale was only referred to the end of the agreement for adjusting Rs. 335/- in return money given at that time.

Merely even though defendant No. 5 Adish Mahab supported the case of defendant No. 1 he did not support the venue of defendant No. 1 regarding the role played by him in the execution of the agreement of sale in favour of the plaintiff. He was a married man. The Additional Civil Judge has rightly dismissed locus production. Had he come in the witness box, it could have been known as to whether he ever wanted to purchase the house along with other defendants or why he gave up his assistance to purchase the house. The mere story regarding Adish Mahab or any part of the story being a prospective vendor is a concocted one.

Lastly defendant No. 1 and defendant No. 3 met on and prior to the agreement of sale dated 17.1.72. Defendant No. 3 must have known that there was a restriction on the transfer of property and permission had to be obtained from the Commissioner. There was evidence to show that on any date defendants Nos. 2 to 4 asked defendant No. 1 either orally or in writing, to obtain the permission from the Commissioner in pursuance of the

agreement dated 17.1.72. Had there been any previous agreement they would have done so.

**21.** For the reasons given above I hold that the agreement of sale dated 17.1.72 was a forged, illegitimate and unenforceable document.

**22.** The second point for determination in the appeal is as to whether the plaintiff or defendant No. 1 had to obtain permission from the Commissioner as provided in Sec. 34 of U.P. Act No. 16 of 1972 as amended by U.P. Act No. 46 of 1972 which came into force on 2nd Dec. 1972.

**23.** Sec. 34 of U.P. Act 16 of 1972 provided as follows:—

Notwithstanding anything in the section the Commissioner of the District on being satisfied that the person making sale of other property held by a person along with members of his family on April 1, 1966 is well as on the date of commencement of this Act does not exceed two lakhs of rupees may permit him to transfer the whole or part of such property.

**Explanation:—** In the sub-section family in relation to a person means his or her spouse and minor sons and daughters (which also means daughter).

**24.** A perusal of the provision shows that application for permission had to be given by the vendor and not by the vendee.

**25.** In para 4 of the plaint it was alleged that defendant No. 1 said the plaintiff that he would try to get the permission to transfer a sale deed from the Commissioner but he did not do so.

**26.** In para 4 of the written statement filed by defendant No. 1 para 4 of the plaint was not admitted.

**27.** In the additional plaint raised by defendant No. 1 it was not specifically alleged that plaintiff had told him that he would obtain the permission from the Commissioner.

**28.** Order 6 Rule 5(1)(c) P.C. provides:—

Every allegation of fact in the plaint if not specifically denied or necessary implication or stated to be not admitted in the pleading of defendant, shall be taken to be admitted except as against a person under disability.

Paragraphs of the Court's observations are repeated verbatim, but are intended to be proved otherwise than by such admission.

39. In *Dr Jagat Singh v. Gurni Kaur Singh*, AIR 1955 SC 773, it was held that it is open to the Court, as evidence in dispute and against party to prove what notwithstanding an admission of default fact by the respondent can be inferred by the court application of Q.B.R. & C.P.C. for such order as may be by the Court.

40. In view of the provisions of O.B.R. & C.P.C. the admission made by the plaintiff in para 4 of the plaint shall be taken to be admitted against defendant No. 1 who was not denying from any denial.

41. In *Marshall's* plaintiff reliance on an admission in support of his contention that it is permission that to be obtained before execution of the sale deed, it was the duty of defendant No. 1 to have obtained the same.

42. In *Mun Lal v. Nand Lal*, AIR 1938 PC 287, it was held that in an agreement of sale there is an implied covenant on the part of the vendor to do all things necessary to effect the transfer. This would include an application under Sec 50(1) of the Criminal Procedure, Tendency Act 1932 to the Revenue Officer to remove the restriction.

43. In *Harbath v. Flood Chand*, AIR 1975 SC 105, it was held that where by a statute a property is not transferable without the permission of the authority, an agreement to transfer the property shall be deemed as to subject to the implied condition that the transferee will obtain the sanction of the authority concerned.

44. In *Ved Prakash v. Shastri Singh*, AIR 1954 ALJ 268, the Court considered the provisions of U.P. Act 26 of 1973. It was held that the responsibility for obtaining the permission was on the vendor.

45. In *Oyrol Prakash* it was held that there was no restriction on transfer of property at the time of agreement dated 6.3.53. The restriction was imposed on 15th July 1973. As there was no restriction on transfer of immovable property at the time of the agreement, there could be no inference that for the part of defendant No. 1 to obtain the

permission. The parties could agree that permission would be obtained by the vendor.

46. I am unable to accept the contention of the Court that the importance of restriction on transfer of immovable property after the agreement made any difference. It was the duty of the vendor to obtain the required permission. If there was any restriction at the time of the agreement itself, it would be the duty of the vendor to obtain such permission since if the restriction on transfer had been imposed at the agreement. Firstly, the permission had to be obtained at the execution of the sale deed could be done only after the permission. Secondly, under the provisions of Sec. 50(1) of U.P. Act No. 26 of 1973 only the vendor could apply for permission. Thirdly, there was no pleading by defendant No. 1 that after the restriction on the transfer of immovable property was imposed, it was agreed between the parties that the plaintiff would obtain the permission.

47. P.W. 1, *Hardenkötter* stated that after the agreement the restrictions on transfer were imposed, that he had talk with defendant No. 1 and that he told him that he would obtain the permission. He further stated that defendant No. 1 did not actually obtain any permission and the sale deed could not be executed before 28.7.73. In his own examination, he stated that he had talk with defendant No. 1 regarding the permission, that defendant No. 1 kept on putting off the matter, said that he would write him that he would go to Meerut on such and such date or such and such date, that he did not give any written notice to defendant No. 1 and that defendant No. 1 never told him that he had given any application to the Commissioner, Meerut Division.

48. P.W. 1, *Kathan Ltd* stated that after the restrictions were imposed, he told the plaintiff that permission had to be obtained, that the plaintiff told him that he should not bother, that the plaintiff showed his signature on a Vakalatnama and a form of application for being moved before the Commissioner, Meerut Division and that he told him that he would go to Meerut for the purpose. In the cross-examination he stated that the plaintiff obtained his signature on 15.12.73 when he was present. He admitted that he made no mention of these facts in the witness statement. After 28.7.73 he went to Meerut

and found out that no application had been given. He had given it to Meera on 24.3.73.

49. The plaintiff gave an application for temporary permission on 10th May 1973. He filed an affidavit in support of the application. Defendant A (Pappan) filed a reply affidavit of an application dated 12.4.73 given by defendant No. 1 to the Commissioner, Mysore District for the purpose, permission. Had defendant No. 1 been keen to furnish the application of such date the plaintiff, he could have given such an application before 25.2.73.

50. Dr. Gyan Prakash placed reliance on Ex. A4, copy of the plaintiff's letter dated 17.2.73. It was decided differently. —

Because 25.2.73 is a date when the major festival, rather an 'harvest' or 'sowing' time with days (pau) like rain (pau) given continuously, which leads to a rain for Karnataka. Kishan Lal put a great commissioner order put to his weight, path he agreed with order in the for Karnataka State.

51. I am unable to accept the contention of Dr. Gyan Prakash that the words 'into before great Commissioner' which lead to a rain, mean that it was agreed between the parties that the plaintiff would obtain the permission or that plaintiff states by these words that he had given application for permission. I have referred to the statement of P.W. 1 Hishimuddin which shows that defendant No. 1 had told him that he would obtain the permission and even, now he said to tell him that he would move the application for permission on such and such date or such and such date. The plaintiff could very well advise this defendant No. 1 was taking the necessary steps for permission on the basis of the statement given by him. By so much of misapprehension, an inference can be drawn that the plaintiff has taken a step for obtaining the permission from the commissioner.

52. Even if the contention of Dr. Gyan Prakash is correct and the said rental in the police records is an admission, the record shows that the admission was erroneous.

53. In *Nagappa v. B. Shama Bai*, AIR 1974 SC 593, it was held that admission is not conclusive. It can be shown to be erroneous or untrue by any evidence in relation which made had not acted to be defendant.

54. In *A.P. Bhargava v. S.S. Bhargava* (1977 All LR 60), AIR 1977 All LR 284, it was held that the effect of a previous admission can be negated by proving facts which go to show that the admission was erroneous.

55. Before relying on the document which go to show that the admission was erroneous, I may make a note of the statement of P.W. 1 Kishan Lal stating that the plaintiff obtained the agreement on a Vakalatnama and a form of application 25-12-72. Agreed with P. A. 1 26 of 1973 would show that there was no provision for such agreement when the flat came into force in 1968 Sept. 1971. The provision was introduced for the first time by O.P. Act No. 45 of 1972 which amended U.P. Act No. 36 of 1972 and introduced sub-clause (b) in Sec. 3 with effect from 24.12.72. There could be no question of the plaintiff having given to defendant No. 1 on 25.12.72 with effect of application or Vakalatnama for his signature. The statement of P.W. 1 Kishan Lal relying on this point is totally false.

56. The relevant facts which go to show that the alleged admission was erroneous are —

(a) Defendant No. 1 did not specifically state the plaintiff's allegation that he had promised to obtain the permission.

(b) Defendant No. 1 did not specifically state in the written statement that the plaintiff had agreed to obtain the permission from the Commissioner, Mysore District.

(c) Under Sec. 3(b) of U.P. Act 36 of 1972 the permission could be obtained by defendant No. 1 and not by the plaintiff.

(d) There is no reliable evidence to show that the plaintiff ever obtained the signature of defendant No. 1 on any application or Vakalatnama.

(e) The statement of P.W. 1 Kishan Lal, stating that the, when he went to Mysore on 24.2.73, he found that no application for permission had been given.

(f) The application for permission was actually given by defendant No. 1 on 12.4.73 vide Annexure A referred to above.

57. I therefore hold that the plaintiff's version is correct. The defendant No. 1 had agreed to obtain the permission. The finding of relevance as in the motion Ex. A-4 does not

amount to an admission that the plaintiff had secured an agreement for permission before the Commissioner. Moore J. notes that the agreement would not be based on the statements given by defendant No. 1 and that even if a fraudulent agreement was alleged, this would not be sufficient.

35. The third point for discussion in the appeal is as to whether and to what extent the nature of the contract.

36. The agreement of sale dated 4.3.72 provided that the sale deed would be executed by 28.3.73.

Section 56 of the Contract Act provides:—

When a party to a contract promises to do a certain thing or to perform a specified act or to carry out a certain duty at or before a specified time and fails to do so within the time so specified or at or before the specified time, the contract is so much of it as has not been performed, becomes voidable at the option of the promisee if the nature of the promise was that time is of the essence of the contract.

37. The failure of a promisee when the contract has to be performed does not make the agreement voidable at the instance of the contract. See *Jamshed Koodamkar v. Bapuji Bhagubhai*, AIR 1974 PC 145.

38. If the contract relates to the sale of immovable property, it will be voidable presumed that time is not of the essence of the contract. See *Marikkar* relied upon by defendant No. 1 in *Patel v. Panchanand Chaturvedi*, AIR 1971 SC 144; *Gowda Prasad Chaturvedi v. Hari Das Shetty*, AIR 1977 SC 1036; *Gowal Lal v. C.K. Sharma*, AIR 1976 All 441 and *Ved Prakash v. Shashigopal Singh*, AIR 1984 All 289.

39. Dr. Gopal Prakash placed reliance on the following observations made in *Gowdabhaiyappa Patel v. Panchanand Hari*, AIR 1957 SC 1449; supra at p. 145:—

It is not necessary to make time of the essence of a contract relating to immovable property if it is not so stated in the contract. It may also be inferred from the nature of the property agreed to be sold, conduct of the parties and the surrounding circumstances as to whether the contract is to be performed at or before the specified time. If the nature of the contract is such that time is of the essence of the contract, the contract will ordinarily be treated as voidable, notwithstanding default

in carrying out the contract within the specified period of time, regard to the degree of importance of the parties, nature of the property and the surrounding circumstances. It is not an easy task to grant the relief if the contract relating to sale of immovable property is voidable. It is presumed that time is not of the essence of the contract. More acceptance is the written agreement of a clause imposing penalty in case of default does not by itself evidence an intention to make time of the essence.

On p. 472 the Supreme Court observed:—

In a contract where time was not expressly of the essence, the appellants could by notice served upon the respondents call upon them to execute conveyance within the time fixed and announce that in default of compliance with the requirement the contract will be treated as cancelled. As observed in *Marikkar v. Korbis* (1974 AC 286) where in a contract for the sale of land the user had to be completed at a certain date of the essence of the contract, but the vendor has been guilty of unreasonable delay, the purchaser may serve upon the vendor a notice limiting a time as to the completion of which he will treat the contract as at an end. In the present case appellants 1 and 2 have served no such notice by their letter dated July 22, 1983 they treated the contract as at an end. While repudiating the contract they qualified its status, a clause for specific performance but right could not be determined by decision of appellants 1 and 2.

40. Dr. Gopal Prakash referred to the reply notice dated 28.3.73 in A 3/2/73 II sent by defendant No. 1 to plaintiff. It was said that plaintiff was told a number of times to obtain permission of the Commissioner, that the plaintiff replied that permission would be received immediately that he was told finally that he should positively obtain permission before 28.3.73 and obtain the sale deed after which defendant No. 1 would not be liable to execute the sale deed, also a warning of the consequences of defaulting No. 1 as to whether plaintiff obtained permission or not. That defendant No. 1 was ready to execute sale deed by 28.3.73 and that thereafter plaintiff would not be entitled to obtain the sale deed from him. It was submitted that defendant No. 1 was entitled to make time the essence of the contract by correspondence and by defect by sending the reply notice.



64. The legal position is that in an open market sale of minerals in property there is a presumption that the time limit of the contract of the contract. Whether such a presumption results in a particular case will depend on the nature of the parties and circumstances of the case.

65. The plaintiff's notice dated 17.2.73, sets out A-4 saying that it would close sale land within 3 days of the permission was lawfully making extension of time does not mean that time was of the essence of contract.

66. Again from my note dated 26.2.73 there is no oral or documentary evidence to show that either party intended that time should be of the essence of the contract. This fact was not specifically pleaded in the written statement filed by defendant No. 1. In para 2 of the additional plea in the written statement filed by defendant No. 1, all that was said was that the sale deed in favour of plaintiff was to be executed by 28.2.73. No case was put forward on this plea. D.W. I Kathan Ltd (Vendee) did not say so at the deposition before the Court below, after the agreement of sale contained in the deed was signed.

67. The provision of s. 25 of U.P. Act No. 36 of 1920 says that defendant No. 1 the vendee alone and not the plaintiff the vendor could close permission.

68. In *Goyal Ltd v. C. K. Sharma*, AIR 1955 All 661, containing Pk that the agreement of sale provided that mortgage deed in favor of G. Alphonso was to be cleared and paid by the vendee before the execution of sale deed. The title deed was to be executed within 6 months. It was held that in such a case time could not be of the essence of the contract.

69. In the present case permission had to be obtained by defendant No. 1 before executing the sale deed. This was a condition precedent to the execution of sale deed. How could defendant No. 1 take the stand that it was no concern of his as to whether a permission was obtained or not? The doctrine in *Goyal Ltd v. C. K. Sharma* (supra) is applicable and time could not be of the essence of the contract.

70. The Additional Civil Judge has rightly held that time was not of the essence of the

contract and I decide the point in the negative.

71. The fourth point for consideration in this appeal is as to whether the doctrine of frustration is applicable.

Sec. 56 of the Contract Act provides:—

An agreement to do an act impossible in itself is void.

A contract to do an act which after the contract is made, becomes impossible, or by reason of some event which the promisee could not prevent, is voidable, if the promisee rescinds it as it becomes impossible or voidable.

Where one person has promised to do something which he knew or with reasonable diligence might have known, and which the promisee did not know to be impossible or voidable, such promisee must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

72. In *Sankar Das Ghose v. Mahipat Singh and Co.*, AIR 1954 SC 48, it was held that doctrine of frustration is really an aspect or part of the law of the discharge of the contract by reason of supervening impossibility or disability of the act agreed to be done and hence comes within the purview of Sec. 56 of the Contract Act.

73. In *Shanku Das v. Hari Singh*, AIR 1951 SC 175, it was held on p. 175:—

The impossibility contemplated by S. 56 of the Contract Act is not confined to something which is not humanly possible. If the performance of a contract becomes impracticable or untenable having regard to the object and purpose the parties had in view then it must be held that the performance of the contract has become impossible. But the supervening event should take away the basis of the contract and it should be of such a character that it strikes at the root of the contract.

74. In *Ved Prakash v. Shalipat Singh*, AIR 1954 All 269, the Court considered the effect of the restrictions imposed on the transfer of property by U.P. Act No. 36 of 1932. It was held that it was the duty of defendant applicant to obtain permission for

records. There was no objection for permission relying on Rushwadien's Agreement v. Y.T.C. Pannawala (Nadar) AIR 1985 SC 110 it was held that the doctrine of frustration does not apply to a well motivated transaction.

75 In this case also the position is similar. Defendant No. 1 did not apply before the Commissioner prior to 28.2.73 for permission to sell. The doctrine of frustration can only not be pleaded for the reason stated. I decide the point in the negative.

76 The fifth point for determination is the appeal is as to whether the plaintiff is entitled to specific performance of the agreement of sale.

77 The records in the plaint and the statement of P.W. 1 Rushwadien clearly show that the plaintiff was not but from time willing and ready to perform his part of the contract. He went up for the sale of the Sub-Registre on 28.2.73. Ex. 3 is the copy of the application given by him before the Sub-Registre between 2 P.M. and 3 P.M. Ex. A.2 is the copy of the application given by defendant No. 1 during the same period. Ex. A.1 is the copy of the application given to defendant No. 1 between 3 P.M. and 4 P.M. Ex. 2 is the copy of the application given by the plaintiff between 3 P.M. and 4 P.M. In the application Ex. 2 given by the plaintiff it was clearly mentioned that he had been prepared to take the balance of the sale consideration. In the application Ex. 2 it was also mentioned that in case the realization of the sale deed and no negotiation was possible, he was prepared to get the sale deed executed and registered. P.W. 1 Rushwadien stated that Khatun Lat Nisang asked him to object the sale deed without permission and he replied that in case it was possible, he was willing. Both the plaintiff and defendant No. 1 had given two applications each between the same time viz. between 2 P.M. and 3 P.M. and between 3 P.M. and 4 P.M. on 28.2.73. It is not possible to believe the statement of D.W. 1 Khatun Lat Nisang that he did not permit the plaintiff on 28.2.73. Defendant No. 2 is a distinguished person. After the agreement in favour of the plaintiff, he began negotiating with other persons. The notice Ex. A.4 dated 07.1.73 was given by the plaintiff to Singh

Mohamed and Abu-Bayda Mohamed Rushwadien No. 1 Khatun Lat Nisang, it is mentioned the plaintiff had come to know the defendant No. 1 did not want to execute the sale deed as he feared and he wanted to ensure the sale deed in favour of the other respondent Defendant No. 1 actually entered into an agreement of sale with defendant No. 2 on 4.4.73. He also applied for permission to the Commissioner. Notice D/2000 on 17.4.73. He set up a witness (Sayed Mustafa) who gave evidence of sale deed (7.1.73) to support the case of defendant No. 1. I am unable to accept, the reason that the plaintiff was not ready and willing to perform his part of the contract as he had no ready money. I hold that the plaintiff was ever ready and willing to perform his part of the contract.

78 In view of my findings above, I am of the opinion that the Additional Civil Judge erred in refusing the decree for specific performance of the agreement of sale and in granting the decree only for the refund of the earnest money.

79 The appeal is allowed and the judgment and decree passed by the court below are set aside. The suit for specific performance of the agreement of sale dated 4.4.73 entered by defendant No. 1 in favour of the plaintiff is decreed. The plaintiff is decreed to deposit Rs. 19,000/- and expenses for stamp and registration within the court-fees within a month. Defendant No. 2 is directed to execute the sale deed in favour of the plaintiff within a week thereafter. The expenses for stamp and registration will be borne by the plaintiff. Defendant No. 4 is further directed to file her position over the house in the plaintiff within the same period. In case of default the plaintiff would be entitled to get the sale deed executed by the Court and also obtain possession over the house through the Court. The plaintiff will get the costs of both the Courts from defendant No. 2 as a.

Appeal allowed.

## 1986 AIR 1, 1-775

N D GUHA AND R E SIRIELLA, JJ

Sudha Ram Agarwal, Applicant v. Sat Shashi Sharma, Opposite Party.

Civil Notes No. 307 of 1982 and Writ Petn. No. 5689 of 1982 (C) 49 (1) 1986.\*

[4.] U.P. Urban Buildings (Regulation of Leasing, Rent and Eviction) Act (21 of 1972), Ss. 2(1), 26, 40 — Expression, date of commencement of the Act used in Ss. 26-40 — Interpretation of — Provisions date on which provision of Act become applicable to building in respect of which suit for apartment was pending — Definition of word "commencement" in S. 4(1) of U.P. General Clauses Act cannot be applied for interpreting the word with reference to Ss. 26-40 — (U.P. General Clauses Act [1 of 1954], S. 4(1)).

Provisions of Ss. 26 and 40 as to the nature of a tenational party of legislation are not intended to serve as bar for operation of the Act until the commencement of the provisions of the Act. The date of commencement of the Act used in Ss. 26 and 40 is interpreted to mean 15th July 1972. The provisions granted by these sections would not be available to such tenants. There cannot be any good ground to take the view that the Legislature intended to create such a discrepancy. The subject-matter of Ss. 26 and 40 therefore require that the definition of the word "commencement" contained in S. 4(1) of the U.P. General Clauses Act should not be applied for interpreting that word with reference to Ss. 26 and 40 thereof. The words "the date of commencement of the Act" used in Ss. 26 and 40 mean the date on which the provisions of the said Act become applicable to the building in respect of which the suit for apartment was pending. In other words if the provisions of the Act had already become applicable to the building on 15th July 1972 it will be the date which will be treated to be "the date of commencement of the Act". In respect of other buildings to which the provisions of the Act become applicable after 15th July 1972

the date of commencement of the Act would be the date on which the building becomes subject to the provisions of the Act within the meaning of S. 2(1) thereof. (AIR 1982 SC 1563 followed) (Para 1-4)

[5.] Provisions — Building contract of — Contain arguments are appearing to have been made before Supreme Court whose decision was relied on — Facts with reference to which argument was subsequently advanced actually decided — Decision is binding AIR 1982 SC 1563 (as to Constitution of India, Art. 144) (Para 5)

Cases Related Chronological Para  
1984 AIR (1) 552 AIR 1982 SC 517 2-3  
1982 AIR (1) 376 AIR 1982 SC (2) 325 (2) 1-2  
1975 AIR (1) 1 1975 AIR 740 (3) 1  
AIR 1982 SC 151 2

Expert Testimony for Applicant & N. Mitra, and V. S. Saxena, for Opposite Party

ORDER — In these two cases the following questions have been referred to us for answer —

Whether the words "the date of the commencement of the Act" used in S. 26-40 of U.P. Act 21 of 1972 mean July 15, 1972 or can they be equated with the date on which a particular building becomes subject to the provisions of the Act within the meaning of S. 2(1) thereof?

A similar question with reference to S. 26 of the aforesaid Act namely U.P. Urban Buildings (Regulation of Leasing, Rent and Eviction) Act 1972 (U.P. Act 21 of 1972) came up for consideration before a Division Bench of the Court in R. D. Ram Nath & Co. v. Girdhar Lal 1975 AIR (1) 1111 where it was held in that case that the words "commencement of the Act" in S. 26 mean therefore mean the date on which the provisions of the Act become applicable to the building in respect of which the suit for apartment was pending. It was also pointed out in the said decision that by virtue of S. 40 of the Act amended the provisions of S. 26 so regard to a suit would apply mutatis mutandis to pending appeals or revisions. In other words the meaning which was to be given to the words "commencement of the Act" in S. 26 was to be given to the same words used in S. 40 also. The learned single Judge who made the reference was of the view that an account of the statutory

\*Agreed order of P. L. Agarwal, Dist. Judge, Dehradun (C) 345 1982



of 1972 should have been 15th July 1972 alone. But in our opinion the case falls within the purview of the time within there is anything important in the subject or context, and in the opening part of S. 4 of the U.P. General Clauses Act which contains the general statement. In this connection it may be pointed out that Ss. 39 and 40 were also conspicuous in the building in respect of which the suit for apportionment was pending on the relevant date could be said to which the old Act namely U.P. (Temporary) General of Revenue and District Act 1947 (U.P. Act III of 1947) did not apply.

5. As a consequence of the aforesaid premises, the proviso of Ss. 39 and 40 of U.P. Act XIII of 1972 could not be avoided by a reason in a suit for apportionment of the building occupied by him was such in which the old Act applied. Thus, where an exception was sought to be made it was specifically provided. If the intention of the Legislature was to make a similar exception in regard to such a matter again, which is not for apportionment was pending on 15th July 1972 which would be the date of commencement of U.P. Act XIII of 1972 according to S. 144 thereof but was that therefore an exception was in respect of a building to which U.P. Act XIII of 1972 did not apply on the date of the submission of the suit at issue of S. 321 thereof but became applicable to it during the pendency of the suit or during the pendency of the appeal or revision against the decree passed in the suit it would certainly have made a specific provision on that behalf in a manner suggestive of a building to which the old Act applied otherwise that was apparently not done. Provisions of Ss. 39 and 40 of U.P. Act XIII of 1972 were the nature of a legislative purpose of legislation and were intended to meet certain legal questions if he complied with the requirements of these clauses. If the words in the date of commencement of the Act used in Ss. 39 and 40 are interpreted to mean 15th July 1972 the provisions passed by these sections would not be available to the means of the category referred to above. There seems to be no ground present in the view that the Legislature intended to create such a distinction. The subject in context of Ss. 39 and 40 therefore requires that the

definition of the word "commencement" contained in S. 4(18) of the U.P. General Clauses Act should not be applied for ascertaining that word with reference to Ss. 39 and 40 thereof.

6. In view of the foregoing derivation and answer to the question referred to us therein it is that the words "the date of commencement of the Act" used in Ss. 39 and 40 of U.P. Act XIII of 1972 mean the date on which the provisions of the said Act became applicable to the building in respect of which the suit for apportionment was pending. In other words of the provisions of the Act had already become applicable to the building on 15th July 1972 it will be that date which will be treated to be the date of commencement of the Act. In respect of other buildings to which the provisions of the Act became applicable after 15th July 1972, the date of commencement of that Act would be the date on which that building becomes subject to the provisions of the Act under the meaning of S. 321 thereof.

7. Before parting with these matters we may point out that a complete order or reference was made in these two cases and in Civil Revision No. 250 of 1952 and Civil Revision No. 251 of 1952. There are Civil Revisions were not listed before us. It appears that S. H. S. Jodha was appearing for the appellants in Civil Revision No. 250 of 1952 and for the respondents in Civil Revision No. 251 of 1952 and because of his death these revisions could not be listed till a notice was served on the parties represented by S. H. S. Jodha to engage another counsel if they so desired. Consequently, we direct that these two cases namely Civil Revision No. 250 of 1952 and Civil Revision No. 251 of 1952 in which the reference has been forwarded may be listed before Hon'ble Mr. Justice V. K. Mahajan who has made the reference for forwarding back our answers to the questions referred to us. We further direct that Civil Revision Nos. 250 of 1952 and 251 of 1952 may also be simultaneously listed before him for suitable orders.

Order accordingly.

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Continuation of Index, Art 226 - U.P.  
(Temporary) Continuation of Road and Electric  
Act (of 1967), S. 22(2) - When parades  
or fairs - Allowance of material obstruction  
by constructing scaffolding on road leading to  
procession blocking the passage - No evidence  
that said scaffolding was of wood and none of  
temporary nature liable to be removed without  
damaging process - Such construction  
cannot be declared by High Court as obstruction  
of highway temporary prohibition under Art. 226  
because evidence will have to be adduced -  
Court suspended both its lower courts in exercise  
of its powers. (P.C.)

Year	1990	1991	1992	1993
1990	1990	1991	1992	1993

AGE	WEIGHT	AGE	WEIGHT	WEIGHT	AGE	WEIGHT	WEIGHT
AGE	WEIGHT	AGE	WEIGHT	WEIGHT	AGE	WEIGHT	WEIGHT

It is Agreed in Minutes 11-13 Signed  
and Forwarded Correct for Record

**ORDER.** — The master process under Art. 126 of the Constitution has been filed by the prosecutor praying for issuing a writ of certiorari for quashing the judgment and order dated 12-1-1974 passed by the Judge, District Courts, Ernakulam as well as judgment and order dated 18-2-1977 passed by the Hon. Additional District Judge, Ernakulam (nos. 7 and 2 in the petition).

3. Briefly stated the facts are: that the petitioners filed a suit for recovery of amounts of five lakhs and damages against Hukam Singh, San Karam, Ram Singh and Karam Singh, Hukam Singh filed during the pendency of the suit while San Karam died during the pendency of the summons in the High Court and their heirs were brought on record. The suit was directed the allegations that the petitioners claimed default in the payment of loans and also that they had made proper abatement by constituting their heirs on the said trading to the petitioners that trusting the petitioners. The suit was continued by the defendants. The last court proceedings No. 2 SINDH A.S. 100/1997/2000.

demanded by said writ judgments and orders dated 21.1.1974, approved in the judgments and orders dated 21.1.1974 the petitioner preferred a suit case to the court of the District Judge first respondent No. 1 which was dismissed by respondent No. 3 writ judgments and orders dated 18.2.1977. Thereafter the petitioner filed a revision before this Court against the order dated 18.2.1977 but it was dismissed by the Court as not maintainable. The petitioner then preferred the present petition under Art. 226 of the Constitution.

3. Counsel for the permittee has been aware that the site construction made on behalf of the permittee is that both the events below cited in approximately the past years of S. 74 (D) of the U. P. (Temporary) General of Rome and Division Act 1967 (hereinafter called the Act) Amendment, the construction was made on the road blocking the passage. The respondent, however, which remains to be decided is whether such construction of two Marlyas connected temporarily of mud, would waste the application of S. 74 (D) of the Act. The permittee who had requested the road construction on 26 / 1972 had submitted a report which had been filed in Attachment II in the next portion but it does not contain the Marlyas use of mud. It has also not been mentioned in the report whether the Marlyas use of a temporary nature or are permanent construction. The consulting respondents while affirming the existence of the two Marlyas submitted that by the mere construction of the two Marlyas the provisions of S. 74 (D) of the Act would not be breached. Respondent No. 1, however, states in the response that the Marlyas had been made at a distance of about 15 feet from the structure of the premises in question and were purely temporary in nature's liable to be removed without damaging the base or the structure of the premises. The construction of the nearest channel for the purpose is that both the points below, cited in law in applying the provisions of S. 74 (D) of the Act. It would thus be independent of the provisions of sub-sec. 74 (D) of the Act and is not a

Further, the United has without the permission or writing of the Imperial agents of permitted to be built any such construction as in the system of the Coast has materially altered the accommodation as is likely substantially to the work on the

It is not clear that any qualifying words have been attached to the word "construction" in subsection (c) of § 3(1) of the Act. It is no doubt clear that the construction must have some connection with the accommodation or the premises that has been fitted. Such construction may be inside the deemed premises or outside or over it. The Supreme Court in *Marbury (Data Disk v. Ashliff)* (the ALR 1987 SC 542) held that the landfill was attached to a fence for the purpose of the owner under § 3(1) of the Act if he established that the construction made by the owner materially altered the accommodation and he was not required further to prove that the said construction was likely to diminish materially the value of the premises if removed.

The response material alterations in its ordinary meaning would mean important alterations, such as those which materially or substantially changed the form or the structure of the premises. It may be that such alterations are premises might not cause damage to the premises or its value or might not amount to an unreasonable use of the deemed premises or constitute a change in the purpose of the land.

The courts below found the construction of the two Marburys (Respondents No. 1) were to the extent that the Marburys were temporary in nature and could be removed without damaging the form or the structure of the premises and thus concluded that the construction were not at all substantial in nature. A Full Bench of the Court in *Sea King Shores v. John McI* (1977 ALJ 30) (1978 1973 ALJ 30) observed:

The mere fact that the construction can be removed does not alter the question as to what any construction, permanent or temporary, can be shown. Whether a construction is permanent or temporary is only a question of its removal if the person making it. It does not alter the question whether the construction materially alters the accommodation or not.

4. In the instant case the courts below have failed to examine that with the construction of the two Marburys the conflicting respondents have materially altered the accommodation. Similarly the court ought

that such a construction is likely substantially to diminish its value. But the test from *John McI*. There is no state of evidence or finding that the Marbury is in danger any of mud and area of a temporary nature liable to be removed without damaging the form or the structure of the premises. The conclusion of respondents No. 1 that the construction are not at all substantial in nature is of no avail while approaching the premises claimed in § 3(1) of the Act. It would have been appropriate for the courts below to have examined the two aspects namely whether the construction had materially altered the accommodation or not likely substantially to diminish its value. But the apparently has not been done. Given the Marbury as being made of mud and temporary nature not brought from the records before the Court. It is such cases it is expected that an enquiry was made as regards the construction whether temporary or permanent so as to determine the controversy. Learned counsel for the petitioners did submitted that the instant controversy requires extensive examination and enquiry which from the materials furnished to the court in the exercise of its extraordinary jurisdiction under Art. 226 of the Constitution, become evident willing to be added and assessed by the court, the only appropriate relief which can be granted is to remove the case to respondents No. 2 to decide the real issue after the parties have adduced their evidence. Learned counsel for respondents Nos. 2 to 3 has no substantial objection to a *Thompson* in view of the decision upon *desires* to be allowed.

5. In the result the petitioners allowed and the respondents by respondents Nos. 2 and 3 dated 31.1.1979 and 18.2.1977 respectively are hereby quashed. The case is remanded to the Court of Judge Small Cases (Kangri) Bench for decision under the light of the provisions as contemplated by § 3(1)(c) of the Act, as well as the observations made above. No order as to costs.

Petition allowed

1984 AIR 1 1 780

B. N. SARAF, APPEAL BY K. RAJESH K.

M/s. Jagan Chd Fund Pvt. Ltd. Manager and others. Petitioners v. State of U.P. and another. Respondents.

Civil Misc. Writ Petn. No. 3833 of 1977 (S. 42) 1984.

(A). Chd Funds Act 46 of 1953, Sec. 6(b) and 6(c). — U.P. Chd Funds Act (C.P. Act No. 53 of 1953), S. 6 — Notification bringing Central Act into force not issued — U.P. Act would not come to be operative in State consequent upon enactment of Central Act.

(B). Constitution of India, Art. 248(1) — (C). Central Finance Act (1948), S. 46.

U.P. Chd Funds Act did not come to be operative in the State consequent upon enactment by Parliament of Central Act on the same subject in the absence of a notification bringing Central Act into force. Court law declared. (Para 27)

Art. 248 must not be construed to mean that State law would be repealed by an enactment of the Parliament in respect of the same field even though the Parliament has expressly provided that the law made by the Parliament shall come into effect on a future date. Art. 248(1) of the Constitution deals with a situation where a law made by the Parliament and another law made by the State legislature both purport to operate in the same field and the provisions thereof are in conflict. Art. 248 deals not with a situation where there are possibility of conflict in the absence of a notification bringing the law made by the Parliament in force. (Para 26)

S. 1(3) provides that the Parliament Act shall enter into force on such date as the Central Government may by notification in the official Gazette appoint. It is clear that in the absence of a notification under S. 1(3) of the Parliament Act, S. 46 cannot come into operation and consequently there is no repeal of the U.P. Act by virtue of the provisions of S. 6(b) of the Parliament Act.

(Para 28)

(B). U.P. Chd Funds Act 53 of 1953, S. 6 — Validity — Act is within legislative

CENTRAL/SC/34/785

competence of State. (Constitution of India, Art. 248(1) Entry 77). AIR 1984 SC 584 (P. 1). (Para 29)

(C). U.P. Chd Funds Act 53 of 1953, S. 14 — U.P. Chd Funds Rules (1974), R. 17(1) — Validity of Act — Act cannot be held invalid on ground that Indian currency be offered as security as provided by R. 17(1).

U.P. Act cannot be struck down as ultra vires on ground that security of Indian currency be offered as required by R. 17 because no provision authorising a private citizen by virtue of Child Control Act. His sh. become a part of R. 17(1) is not capable of compliance. The rule could not be struck down as ultra vires. Even if R. 17(1) is struck down because a prescribed gold bullion is one of the forms of security which can be offered by the borrower, S. 14 of the U.P. Act cannot be struck down because permissible security would be silver in the form of bullion or gold or silver in the form of manufactured article. Security also can be offered in the form of bond or deposit of money or in the form of Government security.

(Para 30.)

Cases Related	Chronological	Para
AIR 1982 SC 1160	1982 Co LP 346	16
AIR 1981 SC 304		25
1977 AJ LJ 300		31
1977 AJ LJ 433 (PB)		3
AIR 1976 SC 156		11, 24
AIR 1984 SC 135	1984 Co LP 823	26
1974 AC 546	45 LRPC 34	34 LT 533 (PC)
Attorney General for Ontario v. Attorney General for the Dominion and the District and Barreau Association of Ontario		17, 23
[1983] 1 AC 829		34 LRPC 77
48 LT 549 (PC)		
Rural v. Reg.		19

Practical Case for Petitioner Seeking Counsel for Respondents

B. N. SARAF, J. — The next person along with several other who petitioners raising similar questions were joined together.

3. There are 18 petitioners in this case. All of them have claimed that they are engaged with business of raising the children various parts of the Uttar Pradesh. The petitioners No. 1 has association of the persons engaged in the business of running other funds.



3. When this writ petition was filed in the year 1975, the U.P. Civil Courts Act, 1975 (U.P. Act No. 15 of 1975) (hereinafter to be referred to as the U.P. Act) was in force. The petitioner has challenged the constitutional validity of the U.P. Act on various grounds stating that it interfered with the running of the business. By the time this writ petition came up for hearing an Act of Parliament known as the Civil Courts Act, 1976 (Act No. 40 of 1976) (hereinafter to be referred to as the Parliament Act) had been enacted by the Parliament.

4. The learned counsel for the petitioner, Sri S. S. Bhargava, as the backbone of his argument urged that by the enactment of the Parliament Act the U.P. Act stood repealed and consequently no restriction could be placed on the petitioners running their business under the provisions of the U.P. Act and the rules framed thereunder.

5. It is necessary to mention here that S. 131 of the Parliament Act provides that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States. It is not disputed between the parties that no notification under S. 1(2) of the Parliament Act has as yet been issued. The argument of Sri S. S. Bhargava appearing on behalf of the petitioners was correct; there would be no law governing the operation of civil courts in the State of Uttar Pradesh as the Parliament Act has not been enforced and the U.P. Act stands repealed.

6. Before proceeding further with the case it is necessary to state here that the subject matter of the U.P. Act and the Parliament Act is the same and they cover the same field. But noted law that if there is repugnancy between an earlier State Act and the law enacted by the Parliament (Act) would prevail as provided under Art. 254 of the Constitution of India.

7. Sri S. S. Bhargava has urged that as soon as the President gave his assent to the Parliament Act it became a statute and it automatically repealed the provisions of the U.P. Act by virtue of Art. 254(1) of the Constitution of India.

8. He highlighted every major inconsistency

in favour of a Full Bench of this Court in the case of *Shri Chandra Bhanu v. Vijayan Singh* 1975 AIR LJ 408. In that case the question was as to whether the provisions of the Statutes on the point of a Court to grant injunction under O. 26 R. 1 C.P.C. introduced by the U.P. Civil Laws (Reforms and Amendment) Act, 1976 (U.P. Act No. 57 of 1976) as reported by the Civil Procedure Code (Amendment) Act, 1976 (Act No. 104 of 1976) enacted by the Parliament. It was found that both the Central Act and the U.P. Act have been enacted by the competent legislature under Entry 12 of List III of VII Schedule of the Constitution of India. The controversy that was raised in the case was as to whether the U.P. Act No. 57 of 1976 should be considered as later Act within the meaning of Art. 254 of the Constitution of India. The facts were that the U.P. Act No. 57 of 1976 had received the assent of the President on 21.12.1976 while the Central Act No. 104 of 1976 received the assent of the President on 9.1.1977, a date anterior to 21.12.1976. It was held by the Full Bench that since the U.P. Act had received the assent of the President on a date later than the date on which the President gave assent to the Parliament Act, the U.P. Act became the later Act so far the meaning of Art. 254 of the Constitution of India and would prevail over the Central Act and as such the amendments of the Code of Civil Procedure were effective in Uttar Pradesh.

9. It is necessary to mention here that the date of enforcement of the Central Act was 1.2.1977 and the date of U.P. Act was 1.1.1977.

10. Mr. Justice E. C. Agrawal observed in para 25 of his judgment as follows:

25. As already stated above, the commencement of an Act can be postponed and so long as it is not to be in operation, the Act remains in abeyance. But even as such it runs through the operation of the substantive provisions of the Act remain in abeyance until the date which is specified by the State Government. It is obvious that the person which empowers the State to appoint the date of commencement of the Act comes into operation on the passing of the Act. Consequently, an Act shall be deemed to have come into operation at the time when it is passed from the date on which the assent is received. This will be a governing factor to decide the

question whether that Act is better or later in the entire code, the same was given by the President to Central Act 106 of 1976 on 19.9.1976 in accordance U.P. Act 27 of 1976 received the assent on 21.12.76 then spent, it would be harder now than the Bill of the State law was introduced in the State Legislature on 5.11.1976. It may further be noted that all these details establish that U.P. law is antecedent law and it will prevail in the State under Art. 254(2) in conformity with the provisions of the Principal Act or with the provisions as amended by Central Act 104 of 1976.

13. In para 29 of the judgment the law further observed as follows:—

"29. A decision of Hon. B. N. Goyal J. in Civil Cases For 511 of 1975 *Indian Farmers Corporation v. Panna Damodar Awasthi* (quoted as 11-9-1975) reported as 1975 AIR 1130) was brought to our notice in which he held that although the Central Act had been passed and enacted by the President earlier but since it was enforced with effect from a later date, the Central Act had to be treated as later in point of time. With great respect to the learned Judge I am unable to subscribe to the view that is later date. It is however apparent that the learned was overruled by the learned Judge because the decision given by the Supreme Court in *A. Vinayakumar Menon v. M. Vithalachandran Pillai* AIR 1956 SC 146 (overruled) had not been brought to his notice. In my view, the decision of learned B. N. Goyal holding that the Central Act will prevail over the State Act does not lay down the law correctly. Therefore, the law stands to agree with law.

14. Mr. Justice Yashwantrao Chavan in his judgment held that—

"I can find no material whatsoever in the holding that the words law occurring in Art. 254 with reference to enactment other than existing laws has a different scope and is confined to enactment when enforced. Its view of those provisions of the Constitution itself. I had no difficulty in concluding that the date of enforcement of an enactment is material for the purpose of Art. 254 unless the Constitution and consequently it must be held that U.P. Act No. 37 of 1976 was made on a date later than Act No. 104 of 1976. In the case of the matter assuming that there is an inconsistency

between any provision of the Code as provided by Act No. 104 of 1976 and the corresponding, introduced by U.P. Act No. 37 of 1976, the U.P. Amendment having received the assent of the President shall prevail.

15. The learned Judge, dealing the (P) Bench was correctly cited to the conclusion that a Bill becomes an Act on receiving the assent of the President. The U.P. Act having received the assent of the President, after the Central Act was therefore, a later Act and would by virtue of the provisions of proviso to Art. 254(2) of the Constitution of India would prevail in the State of Uttar Pradesh.

16. In the present case, the Parliament Act is undoubtedly later in date to the U.P. Act and would prevail if it was enforced.

17. The question to be decided is as to whether by virtue of Art. 254 of the Constitution of India, the U.P. Act stands repealed or upon the fact that no resolution has been passed under S. 17(1) of the Parliament Act.

18. It is settled law that a statute may under a power on an outside agency to bring into force the provisions of the Act. The Supreme Court in the case of *A. K. Roy v. Union of India* AIR 1962 SC 719 has in paragraph 31 of its judgment related to clause cases where such a power has been upheld and has followed the same. It has noted a statement of law made by H. M. Seervai in his *Constitutional Law of India* (2nd Edn at P. 1303) in its judgment as follows:

"The making of law is not an end in itself but an exercise in and which the legislature desires to exercise. That end may be secured directly by the law itself. But there are many subjects of legislation in which the end is better secured by a more direct delegation of legislative power. There are practical difficulties in the enforcement of direct legislation, especially with those enactment as also in case of direct enactment in different areas. Those difficulties cannot be foreseen at the date when the law is made. It therefore becomes necessary to leave to the judgment of an outside agency the question as to when the law should be brought into force and to what extent it should be extended from time to time. What is permissible to the Legislature by way of conditional legislation cannot be considered impermissible to the Parliament when it

exercise of its constitutional power, it takes the view that the question as regards the issue of enjoyment of a constitutional amendment should be left to the judgment of the courts. We are, therefore, of the opinion that Section 44 of the 44th Amendment Act is not ultra vires the power of the Dominion Parliament by Art 94(1) of the Constitution.

17 The Privy Council is a well known precedent at the date of Attorney-General for Ontario v. Attorney-General for Dominion and the Distillers and Brewers Association of Ontario (reported in 1894 AC 398) had to consider the provisions of the British North America Act and as authorities in 71 and 92 stated: "The Privy Council observed at page 366 of its judgment that —

"It has been frequently suggested to the Board, and it may now be regarded as settled law, that since before the adoption of the British North America Act the enactment of the Parliament of Canada is so far as their act within its competency, must override provincial legislation.

18 After dealing with various other questions, the Privy Council observed that —

"The question must now be considered whether the provincial enactments of 1853 are valid to the extent of their collision with the provisions of the Canadian Act of 1850. It is so far as they do provincial must yield to Dominion legislation, and must remain in abeyance unless and until the Act of 1850 is repealed by the Parliament, which passed it.

19 The Canada Temperance Act of 1876 provides that it will come into force in a particular district at the previous notice certain percentage of voters adopt for coming under its provisions and an order in Council had been made. In the case before the Privy Council such an order of the Council had not been made. It was therefore held that the Provincial Approbation was necessary when that particular district in the Canada Temperance Act was taken notice in the Dominion as an order in Council had been made. In a crucial part of the judgment their Lordships observed as follows:

"It thus appears that in their local application within the Province of Ontario

there would be considerable difference between the two laws, but it is obvious that these provisions could not be in force within the same district or province at one and the same time. In the opinion of their Lordships the question of conflict between these provisions which arises in the case does not depend upon their identity or non-identity but upon a feature which is common to both. Neither statute is imperative; these prohibitions being of no force or effect and there have been times voluntarily adopted and applied by the vote of a majority of the electors in a district or municipality. In Russell v. Fog (1882) 7 AC 825 at p. 844 it was observed by the Board with reference to the Canada Temperance Act of 1876: "The Act as such is a law passed by a law for the whole Dominion, and the enactment of the last part relating to the machinery for bringing it into force and its enforcement took effect and might be put in motion at once and everywhere within it. No doubt can be found with the propriety of that statement. Most certainly it is equally true as a declaration of the provisions of 1853. In that another law can the statement mean more than that, that on the passing of the Act each district, or municipality within the Dominion or the province, in the law might be brought into effect with rights to adopt and enforce certain prohibitions if it thought fit to do so. But the prohibitions of these Acts which contravene their respective enactments cannot with the least degree of accuracy be said to be in force anywhere and they have been locally adopted. If the prohibitions of the Canada Temperance Act had been made imperative throughout the Dominion, their Lordships might have been constrained by previous authority to hold that the provisions of the Legislature of Ontario in part 2 of its Act would have had been superseded. In this case no provincial prohibitions such as are mentioned by 1853 could have been enforced by a municipality without coming into conflict with the paramount law of Canada. For the same reason provincial prohibitions in fact which a particular district will necessarily become operative whenever the prohibitory clauses of the Act of 1876 have been adopted by that district. But their Lordships can discover no adequate ground for holding that there exists repugnancy between the two laws in districts of the province of Ontario where the prohibitions of the Canadian Act are not in

may never be as large. In a danger which lies by the vote of its electors representative would give all the Canadian Act the option as abolished by three years from the date of the poll and a healthy stream of doubt that there could be no emergency while the option given by the Canadian Act was suspended. The Parliament of Canada has not either expressly or by implication assumed that so long as any delay or refusal to accept the provisions which it has authorized the provincial Parliament is to be deferred from exercising the legislative authority given it by S. 101(b) of the Constitution of the United States is a local evil. Any such legislation would be unconstitutional and a grave question whether it would be lawful. Even if the provisions of S. 101 had been suspended, they would not have taken away or impaired the right of new States to demand to adopt and thereby being not force the population of the Canadian Act.

Three lookups for these reasons give a general picture in the seventh question in the affirmative. They are of opinion that the Ontario Legislature had jurisdiction to enact S. 101 subject to the necessary qualifications: that its provisions are or will become necessary in any district of the province which has already adopted or may subsequently adopt the original part of the Canada Temperance Act of 1884.

2. In *Re S. 101*, *Blomquist* argued that the Supreme Court has not accepted the doctrine of the Privy Council in the aforementioned case and referred to the decision of the Supreme Court in the case of *Lawrence v. Attorney General of Ontario*, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 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3565, 3566, 3567, 3568, 3569, 3570, 3571, 3572, 3573, 3574, 3575, 3576, 3577, 3578, 3579, 3580, 3581, 3582, 3583, 3584, 3585, 3586, 3587, 3588, 3589, 3590, 3591, 3592, 3593, 3594, 3595, 3596, 3597, 3598, 3599, 3600, 3601, 3602, 3603, 3604, 3605, 3606, 3607, 3608, 3609, 3610, 3611, 3612, 3613, 3614, 3615, 3616, 3617, 3618, 3619, 3620, 3621, 3622, 3623, 3624, 3625, 3626, 3627, 3628, 3629, 3630, 3631, 3632, 3633, 3634, 3635, 3636, 3637, 3638, 3639, 3640, 3641, 3642, 3643, 3644, 3645, 3646, 3647, 3648, 3649, 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3664, 3665, 3666, 3667, 3668, 3669, 3670, 3671, 3672, 3673, 3674, 3675, 3676, 3677, 3678, 3679, 3680, 3681, 3682, 3683, 3684, 3685, 3686, 3687, 3688, 3689, 3690, 3691, 3692, 3693, 3694, 3695, 3696, 3697, 3698, 3699, 3700, 3701, 3702, 3703, 3704, 3705, 3706, 3707, 3708, 3709, 3710, 3711, 3712, 3713, 3714, 3715, 3716, 3717, 3718, 3719, 3720, 3721, 3722, 3723, 3724, 3725, 3726, 3727, 3728, 3729, 3730, 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sovereignty, into matters relating to taxation. Consequently, Section 123 of the Act provided that it was to come into operation on such date as the Constituent Government may by notification in the Government Gazette appoint. Before any notification could be issued under S. 123 there was an integration of the State of Travancore and the State of Cochin. By virtue of Ordinance I of the 1124 promulgated on the same day, called the United States of Travancore and Cochin Administration and Application of Laws Ordinance, 1124 Ordinance I was later merged as Act VI of 1124. All existing laws of Travancore were to continue as laws not altered, amended or repealed by subsequent authority. The integration of Travancore was defined to mean any law in force in the State of Travancore immediately prior to 1.7.1949. On 28.7.1949 a notification was published in the Travancore Cochin Government Gazette. The High Court has held that no notification under S. 123 could be issued appointing a Constituent in Act No. 14 of 1954 passed by the Travancore Legislature was not a law in force in Travancore. The argument was rejected by the Supreme Court and it was found that S. 123 by virtue of which there was a power to issue a notification bringing into force the provisions of the Act was a law in force in the State and consequently the notification was validly issued. This was not an assistance to either of the parties.

22 The effect of the decision thus was, in the absence of a notification being issued by the Constituent Government under Sec. 123 of the Parliament Act, the Act is on the books but is a law applicable to India. It does not, however, mean that the Act is in force in its entirety.

23 Article 254 which (1) of the Constitution provides for a situation where there is a repugnance between the law made by the Parliament and the law made by the legislature of a State. By virtue of cl. (2) to Art. 254 where a law made by a legislature of a State is repugnant to a law made by the Parliament, the law made by the Parliament shall prevail over the law made by the Legislature and the law of the State legislature is so far as it is repugnant to the law made by the Parliament, shall be void. This Article does not mean that a State law would stand repealed even though a law made by the

Parliament is not in force and the law made by the Parliament would, when it is enforced, be repugnant to the law made by a legislature of a State and under the State law and Article 254 may not be construed to mean that State law would be repealed by an enactment of the Parliament in respect of the same field even though the Parliament has expressly provided that the law made by the Parliament shall come into effect on a future date. Since all laws in operation and of the S. 2, Bhargava's argument is accepted a situation would be created because the State Act would stand repealed and the Act made by the Parliament would not be in force. Article 254 (1) of the Constitution of India deals with a situation where a law made by the Parliament and another law made by the State Legislature both purport to operate in the same field and the provisions thereof are in conflict. Article 254(2) does not deal with a situation where there is a possibility of conflict on the issuance of a notification bringing the law made by the Parliament in force.

24 We are in the circumstances satisfied that in S. 2, Bhargava is not correct in his argument that the U.P. Act ceased to be operative in the State consequent upon the enactment of the Parliament Act.

25 On S. 5 Bhargava urges that even in the absence of a notification under Sec. 123 of the Parliament Act the U.P. Act stood repealed by virtue of the provisions of S. 9 of the Parliament Act which repealed the Acts specified in sub-sec. (1) thereof and in the list of the Acts specified in the U.P. Act (the Uttar Pradesh Char Pund Act, 1971). He submits that the language of S. 9(1) is a peremptory and repealed the Acts specified in sub-sec. (1) and applied the provisions of S. 5 of the General Clauses Act to the Acts repealed as if each of such Acts is repealed with Central Act. Section 9(2) provides that the Parliament Act shall come into force on such date as the Constituent Government may by notification in the Official Gazette appoint. It is clear that in the absence of a notification under Sec. 123 of the Parliament Act, Sec. 9 cannot come into operation and consequently there is no repeal of the U.P. Act by virtue of the provisions of Sec. 9(1) of the Parliament Act.

26 On S. 2, Bhargava has urged that the

U.P. Act was beyond the legislative competence of the State Legislature and the Legislature could only, by amendment under Entry 72 of List I of VII Schedule to the Constitution of India. This argument can also not be accepted. The matter is really covered by a decision of the Supreme Court in the case of *Srinivasa Raghavapada v. Union of India*, 438 (1983) SC 204. In that case the Parliament had enacted the Price Control and Minimum Costing Subsidies (Repealing) Act, 1976 (Act No. 43 of 1976). It was held by the Supreme Court that the legislative entry under which the Act was made, *Inter-mediate Entry 72 of List I of the VII Schedule*. The State had therefore, not in fact, to make the legislative competence of the State.

10. We have not to consider the argument advanced by, in S. S. Bhargava that certain provisions of the U.P. Act read with rules made thereunder are arbitrary and void as they are a part of the machinery provisions of the Act. The whole Act is a legislative and not an administrative. Section 14 requires that every licensee shall file the statement of his cash and bullion proceeds security prescribed under S. 14. Rule 17(1) provides that the security referred to in S. 14 shall be either in gold or silver or in the form of bullion or manufactured article. Section 5 Bhargava says that bullion cannot be given as security as in possession is prohibited by a provision made by virtue of the Gold Control Act.

11. Section 14 provides for various kind of securities. Under (3) (a) statement is may consist of a bond or transfer of money for the other subscribers for the proper conduct of the club, changing property securities in the satisfaction of the Registrar for the satisfaction of the other members, or sub of the bond is a condition. A sum amount of a deposit is an appeal of trust, an interest equal to the one thousand or more in Government securities of the face value of not less than one and half times the the amount and transfer the amount to deposit in the Government securities as Union of the Registrar is to hold it over by him as security for the due conduct of the club. These provisions are for the protection of the subscribers. There are many instances of cheating of subscribers and the legislature was conscious of the need to protect the interests of the subscribers. Where the money in cash was to be deposited the money

required to be deposited in the club account whereas in other forms of security like gold, the amount of security was higher than the club account. This was obviously to cover those cases where the value of the property offered as security would come down or would be difficult to realize. It may be that the gold bullion cannot be given as security as required under S. 17(1) but silver or gold or form of manufactured article nevertheless can be offered as security. Merely because a part of S. 17(1) was capable of compliance the rule could not be struck down as also void. Indeed we strike down S. 17(1) because a prescribed gold bullion as one of the form of security which can be offered by the licensee, Sec. 14 of the U.P. Act cannot be struck down because permissible security would be valid in the form of bullion or gold or silver or in the form of manufactured article. Security also can be offered as monetary value in the form of bond or deposit of money or in the form of Government security.

12. It is now after fact that we have rejected the argument of in S. S. Bhargava. We do not consider it necessary to repeat any argument on the submissions of the Advocate General that even if we assumed that the Parliament Act had the effect of repealing the U.P. Act, the persons concerned would continue and they would be bound by the U.P. Act because of the provisions of Sections 55 and 90(2) of the Parliament Act.

13. In the result, the writ petition is dismissed with costs.

14. Under the various order of the court dated 26-5-1977 confirmed on 28-1-1984 it was provided that the respondents would not take steps to enforce any liability against the petitioners for contributions of the provisions of the Act provided the petitioners made a deposit as mentioned in the court order dated 26-5-1977. We declare that the deposits have been made as directed by the order of the Court as security had been furnished to the satisfaction of the Registrar. The Registrar shall determine whether any amount is payable by the petitioners and the respondents shall pay the amount of the Registrar to the respondents is no such liability. He shall deliver the return of the amount and the security. The Respondents shall be discharged. The Registrar should complete the part of the work as soon as

possible. The prisoners are directed to co-operate with the Registrar.

35. We further direct that since the prisoners operated their business under the interim orders of the Court, no penal action should be taken against them unless they have run their business without complying with the interim orders of the Court. The prisoners will however not be at liberty to carry on their business any further except in accordance with the provisions of the U.P. Civil Funds Act, 1975.

36. We also direct that any ongoing civil litigation initiated by the prisoners subsequent to the interim orders shall be subject to the interim orders of the Court. Any prisoner who fails to come to us and to abide by the orders of the Court is being given to protect the interest of the existing subscribers.

Prisoners dismissed

1984 ALL. L. J. 717

S. D. AGARWALA, J.

**Gorlick Nath Udaydass, Applicant v. State of U.P. and others, Respondents**

Civil Appeal No. 443 of 1983 (D/- 22.1.1984)\*

Civil P.C. (3 of 1984), Ss. 94, 106, 3(2); O.T.B. 11 - Writ "Deceit" includes rejection of plaint - Order rejecting plaint is appealable - Rejection of High Court is not maintainable

The word "Deceit" includes the rejection of a plaint. Where by an order under O.T.B. 11 the case of one of the defendants has been struck off by the trial court on the ground that the plaintiff does not disclose any cause of action against such defendant and the suit has been dismissed as against him, the order is effective against the rights of the plaintiff to bring a suit against such defendant, therefore such an order under O.T.B. 11 amounts to a decree and hence appealable. The order being appealable revision against such order is not maintainable. It is to be noted, even because of the value set off the suit the appeal lies to the High Court and revision before it was not maintainable. (Para 11-13) (M)

\*Against order of Allahabad Court. Civil Judge, Allahabad (D/- 17.11.1983)

Cases Referred	Chronological	Page
A.R. 1983-SC 2284		12
A.R. 1984-SC 49*		13
A.R. 1981 AL 333 (2)		12

A. N. Bhargava, for Applicant, D. S. Saxena, Addl. Chief Standing Counsel, for Oppos. to Petition

**ORDER.** - This is a Civil Revision filed under S. 110 of C.P.C.

1. The respondent Gorlick Nath Udaydass filed a Suit No. 46 of 1979 in the court of the Civil Judge, Ballia, against opposite party No. 1 as IT for recovery of Rs. 3-00 (00/-) as damages for tortious prosecution. Sri Satish Kumar Mulhoney, opposite party No. 2, was the then District Magistrate of Ballia. The result of being continued as he held office.

2. During the pendency of the suit, Issues Nos. 15 and 17 were decided as preliminary issues by order dated 17th Nov. 1983 by the Civil Judge, Ballia. Issues Nos. 15 and 17 were in the effect as to whether the suit is liable to be rejected under O.T.B. 11, C.P.C. as against opposite party No. 2 and as to whether the opposite party No. 2 is liable to be discharged as the cause of action has been stated or not against him.

3. The Civil Judge, Ballia, by his order dated 17th Nov. 1983 decided both the issues in favour of opposite party No. 2. It was held that the plaintiff did not disclose any cause of action against opposite party No. 2 and consequently the suit was dismissed as against the opposite party No. 2 under O.T.B. 11, C.P.C. It was further held that since no cause of action was disclosed against the opposite party No. 2, the opposite party No. 2 is liable to be discharged as a party in the said suit. The order dated 17th Nov. 1983 has been challenged by the writ of the present revision in this Court by the plaintiff herein.

4. I have heard the learned counsel for the revisionist as well as the learned counsel appearing for the opposing opposite party No. 2 (Sri Satish Kumar Mulhoney).

5. Learned counsel for the revisionist has contended that the Civil Judge has acted wholly without jurisdiction in deciding issues Nos. 15 and 17 as preliminary issues. Secondly, it has been urged that in law cause of action also was stated by the court below that no cause of action is disclosed against the

opposite party No. 2 is a leading municipal corporation. Therefore it has been argued that under O T R 11 C P C the Court could reject the plaint, and not reject the plaint, as per order against me determined finally it has been submitted that sufficient particulars were available in the plaint and the court below has erred in law in holding that the particular averaged under O T R 4 C P C are lacking.

7. Learned counsel for the opposite party No. 2 has, however, raised a preliminary objection that a decree is not maintainable against the order dated 17th Nov. 1952 and attacks the question of considering the validity of the order as made does not arise at all.

8. I will now consider the preliminary objection raised by the learned counsel for the opposite party No. 2.

9. In the opening portion of the order dated 17th Nov. 1952 which has been challenged in the present revision, it has been directed that the plaint would be rejected under O T R 11 C P C as against opposite party No. 2 for having disclosed no case of action.

10. Order T R 11 C P C empowers the Court to reject a plaint when it does not disclose a case of action. S 22 C P C defines a decree as order.

22. decree means the formal expression of an adjudication which, on the merits of the Court, expressing a conclusively determines the right of the parties with respect to all or any of the matters in controversy in the suit and may be made preliminary or final. It shall be directed to include the rejection of a plaint and the determination of any question which may lawfully arise thereon.

(a) any adjudication from which an appeal lies as an appeal from an order; or

(b) any order of dismissal for default.

11. It is clear from the above mentioned definition of decree, decree does not include the rejection of a plaint. In view of the specific provision in order rejecting a plaint, clearly amounts to a decree. If a court orders a case to be rejected then, against the order dated 17th Nov. 1952.

12. In *Shanley Singh v. Rajender Prasad*, AIR 1950 SC 2544 it has been held as under:

In the present case the plaint was rejected

under O T R 11 of the C P C. Such an order amounts to a decree under Sec. 22 and there is a right of appeal open to the plaintiff.

The doctrine of the case of *Shanley Singh v. Rajender Prasad* (supra) fully applies in the present case. In the circumstances, it is clear that against the order dated 17th Nov. 1952 an appeal lies.

13. In *Major S. S. Khanna v. P. J. Dhillon*, AIR 1954 SC 491 the Hon'ble Supreme Court had an occasion to consider the scope of the O T R C P C as under:—

If an appeal lies against the adjudication, directly to the High Court, or to another Court from the decision of which an appeal lies to the High Court, it has no power to exercise its revisional jurisdiction, but where the decree itself is not appealable to the High Court directly or indirectly, except as the revisional jurisdiction by the High Court, would not be deemed excluded.

The Supreme Court, consequently has held that where an appeal lies to the High Court the High Court has no power to exercise its revisional jurisdiction. In the instant case, the revision of this case is for 1st appeal. In the circumstances, an appeal clearly lies to the High Court. If an appeal clearly lies to the High Court the High Court at least above, has no power to exercise its revisional jurisdiction. In view of the above, I am of the opinion that against the impugned order, an appeal lies and, in fact, the present revision is not maintainable in law.

14. There is another aspect of the matter. By the impugned order, the name of the opposite party No. 2 has been struck off by the civil court on the ground that the plaint does not disclose any cause of action against the opposite party No. 2 and the suit has been dismissed as against him. The order in effect determines the right of the plaintiff to bring a suit against the opposite party No. 2. This clearly amounts to a decree and, in fact, is also appealable.

15. In *Shree Raj v. Jagdish Ram*, AIR 1954 All 330 (3), a Division Bench of this Court after examining the provisions of O T R 11 C P C has held as under:—

Order 1 R 49 C P C and P C provides that the Court may at any stage of the proceedings order that the name of any party improperly joined whether as plaintiff or defendant be struck out. According to a joint



the same the party is not necessarily a dealer. Where the plaintiff had expended a portion merely upon the ground of convenience and the plaintiff withdrew no claim of damage against him and the plaintiff has claimed to rely against him, the order of the Court denying the removal of the name of such a defendant does not operate as a decree for otherwise the effect of an adjudication, and the essence of the original claim remains undisturbed. Where however a decree of action against a defendant has been specifically pleaded and a decree relief has been claimed against him the order denying the removal of his name from the array of parties is a substance although not in form, a decree because the effect of the order is to refuse to grant the relief to the plaintiff which he had prayed for against him. Defendant 2 was not implicated only for the sake of convenience. The plaintiff had sued him because of an alleged cause of action against him and the plaintiff had prayed for a decree against him for Rs. 1,000 as damages. The effect of the order passed by the District the virtual dismissal of the suit against him outside later has been awarded his costs from the plaintiff. We are clearly of opinion that the order sought to be removed was a substance a decree and was open to appeal as such.

(6) The principle laid down by the District Bench fully applies to the present case. In the face of the decree also the impugned order dated 17th November 1983 amounts to a decree and as such an appeal would lie against the said order and the reasons would not be maintainable. Hence I am of the view that an appeal lies and a revision was maintainable and not necessary for me to give specific names of the submissions raised by the learned counsel.

(7) In the result the revision fails and is dismissed as not maintainable. The parties are directed to bear their own costs.

Revision dismissed.

1986 ALL L J 719

B. D. AGRAWAL, J.

*Mahendra Kumar Jain and others  
Applicants v. State of U.P. and others Opposite  
Parties*

Criminal Misc. Appeal No. 12713 of 1985  
D. 31.3.1986.

CIVIL NO. 346/1985 S.M.A.

(A) U.P. Decree Affected Areas Act (21 of 1948), S. 7(2) — Total of scheduled offences by special court — Procedure — Account submitted by Special Judge for scheduled offences — Objection that list of prosecution witnesses required under S. 204(2) Cr. P.C. was not filed cannot be raised — S. 7(2) excludes procedure relating to inquiry from being resorted to trial before Special Judge (Criminal P.C. (2) of 1974), S. 204(2).

(Para 6)

(B) U.P. Decree Affected Areas Act (21 of 1948), S. 7(2) — Total of scheduled offences by Special Judge — Procedure — Account submitted by Special Judge for offences under S. 205 Cr. P.C. — Objection that all witnesses, for compliance were not examined as required by S. 205(2) Cr. P.C. cannot be raised in view of S. 7(2) (Criminal P.C. (2) of 1974), S. 205(2) (Para 6).

(Para 6)

*Case Reported Overriding Para  
1984 Cr. LJ 183 1985 All WCR 281 7*

*P. K. Jain for Applicants, Vinod Kumar Sharma and Gajraj Kumar for Opposite Parties*

**ORDER** — This is an application under Section 402 Code of Criminal Procedure.

1. First information report was lodged at Police Station Tunda district Agra by Anil Kumar Jain opposite party No. 2 on November 26, 1944 against the applicants for offence under Section 205 Indian Penal Code. The police submitted final report at the conclusion of the investigation to the Special Judge, Agra constituted under the U.P. Decree Affected Areas Act, 1943 thereafter referred to as the U.P. Act 21 of 1943. A second person was filed as matter on March 25, 1945. The Special Judge recorded the statements of witnesses for the complainant and under the impugned order dated November 4, 1983 he mentioned the applicants named for offence under Section 205 Indian Penal Code.

2. Learned counsel for the applicants contends that the cogent evidence taken by the Special Judge, Agra, is stated by the following manner —

“A list of the prosecution witnesses required under Section 204(2) Criminal Procedure

Code was not filed from the date of the completion.

(c) All the strategies for the compliance were not exhausted as required under the provisions of section 20 of the Code.

(d) There is contradiction between the statements presented in the first information report referred to above and the affidavits filed by R. K. Jais (para 7) wherein it is stated that a Magistrate has the application R. K. Jais, it may be proved in the letter of Atul Kumar Jais.

(e) The statement of the Magistrate, one of the signed persons made before the Special Judge, is defective.

4. I have heard learned counsel for the parties and considered the grounds referred to above. But I do not find any basis material for setting aside on the grounds of the obvious jurisdiction. There is no dispute that the writ here is a speedy trial writ which means the granting of section 33A of the U.P. Act 26 of 1973. Section 7 of the Act lays down the procedure and powers of Special Courts. The impugned Special Court, according to section 33A means court constituted under Section 5. Section 5 empowers the State Government to constitute a Special Court in consultation with the High Court for the purpose of speedy trial of scheduled offences committed and alleged offences. Offence under Section 305 falls within scheduled offences as enumerated in the Schedule appended to the Act read with Section 299. The procedure and powers of Special Courts provided in Section 7 are as under:—

(a) A Special Court may take cognizance of any scheduled offence.

(b) upon knowledge complaint of facts which constitute such offence.

(c) upon police report of such facts.

(d) upon information received from any person other than a police officer, or upon its own knowledge that such offence has been committed.

Provided that all cases triable by a Special Court under the Act pending before the court immediately before the date of the commencement of the Act in a district affected area shall stand transferred to the special Court having jurisdiction over such area and shall be dealt with and disposed of in accordance with the provisions of the Act.

(e) A Special Court shall, while trying a

scheduled offence so far as may be, follow the procedure provided by the Code of Criminal Procedure, 1973 for trial of ordinary cases.

Provided that the Special Court may, wherever necessary, perform the functions of a Magistrate under Section 217 of the said Criminal Procedure Code and the case had been committed to Court of Session for trial under the provisions of such Code.

(f) Save as otherwise expressly provided in the Act, the provisions of the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973 shall, so far as they are not inconsistent with the provisions of the Act, apply to the proceedings before a Special Court and for the purpose of the provisions of the said Code, the Special Court shall be deemed to be a Court of Session and the person conducting the proceedings before a Special Court shall be deemed to be a public prosecutor.

(g) A Special Court may, with a view to obtain the evidence of any person supposed to have been directly or indirectly concerned in or privy to any scheduled offence, transfer a person to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any person so transferred shall for the purpose of section 305 of the said Code, be deemed to have been arrested under section 307 thereof.

(h) A Special Court may pass upon any accused person committed by a Magistrate authorized by law for the punishment of offence of which such person is accused.

5. From the above it can be captured clearly that there are dichotomous statements between reports on the one hand and the trial on the other. As per sub-section (b) a Special Court while trying a scheduled offence, it may be followed the procedure provided in the Code for trial of ordinary cases. The provisions sub-section (d) require the provision contained in Section 299 of the Code also to be applied in the Special Judge. Sections 200, 205 are placed in Chapter XVI (Complaints to Magistrate). Section 204 is situated where a Magistrate takes cognizance of an offence on complaint. Section 205 comes in picture also when cognizance is taken by a Magistrate on a complaint. Section 204 pertains to Chapter XVII (Commitment of Proceedings before Magistrate). The issue is attracted where (i)

consideration as before a "Magistrate (taking cognisance of an offence). It is not referred to a Magistrate issuing a summons or warrant as the usual rule (the Code Section 204) is that the sub-section (2) lays down that in such process shall state against the accused and a list of the prosecution witnesses has been kept. Section 209 which also falls in Chapter XIV lays down the procedure for commitment of cases to the Court of Sessions when offence is made exclusively by it. It is so far as the Act 1963 is concerned, there is no question of commitment of the case to the Court of Sessions. There is no inquiry proceeding against the trial.

6. The Special Judge is empowered to take cognisance straightaway in accordance with subsection (2) of Section 7 of the Act and then proceed as laid thereinafter. Sub-section (2) significantly takes of the procedure provided by the Code of trial of sessions cases. The does not cover what is laid down in the Code in relation to inquiry. Section 300 of the Code makes provision for the supply of the accused of copy of police report and other documents. This has been expressly incorporated in the provision of subsection (2) for object reasons to enable the accused even in such trials to have the relevant documents. But by the use of the procedure envisaged in the Code relating to inquiry including the commitment to the Court of Sessions is substituted by summary imposition. The reason behind is clearly understandable: since the complaint is to the Special Judge straightaway as such and there has to be no commitment made to have them even no question of invoking Sections 300, 301 or 304 for that matter. Inquiry is clearly stated here trial and this is manifest also on reference to the definition given to the expression "inquiry" in Section 70 of the Code. Inquiry according to this definition is other than a trial and is conducted under the Code by a Magistrate or Court. I am conscious that according to Section 4 of the Code offence under any law other than the Penal Code have ordinarily to be investigated, reported and tried according to the usual procedure. But as subsection (2) used there is exception where there is any other enactment for the time being in force regulating the manner or place or consequence of inquiry at trial. According to subsection (4) of Section 7 of the Act, 1963, also the procedure laid in the Code does not apply. 1985 All L.J. 46. 191 (3).

as so far as it is consistent with the purport of the Act. Sub-section (2) of Section 7 as explained above excludes the procedure relating to supply from being invoked when the trial takes place before the Special Judge except as far as in Section 307 of the Code is concerned. The issue in other words that in the case as in present there may be no objection raised from the rule of the application invoked based on the grounds (iii) and (iv) aforementioned are concerned.

7. Learned counsel appearing for the opposite parties contended that before proceeding to take cognisance and commencing the criminal application the Special Judge has taken care to record the statements of the accused witnesses. The witness examined by the Special Judge are the two accused persons namely, Ben Chango Dero and Ben Mamo Dero. Besides the two alleged witnesses namely Molokutu Kaewu, Moten Lot Ratu, Marlam Singh and also the two Medical Officers. Besides the Investigating Officer. This, according to the complainant, constitutes the entire lot of witnesses as appearing also in the reference made in the police report. There was it is true no separate affidavits appended as such to the present process which for all practical purposes is done in the form of a complaint. But this is altogether immaterial since Sections 204 or Sections 300/301 of the Code for that matter are inapplicable. A learned single Judge has taken the same view in *Brundis Prasad Singh v. State of U.P.* 1981 All WC 384. 1985 Cr LJ 1265. It is only by way of satisfaction before taking cognisance that the Special Judge may be said to have recorded these statements.

8. It is so far as grounds (iii) and (iv) aforementioned are concerned. suffice it say to say that the court is not called upon to state even the words under oath and there are things which do not go to the root of the jurisdiction rather it remains open to the accused to put their witness examination afterwards to the witnesses concerned. The procedure adopted by the Special Judge obviously does not suffer from illegality nor is there the lack of jurisdiction so as to restrict the summary powers of the court under Section 452 of the Code.

9. The application accordingly fails and it

demanded as losses. The interest they granted on November 20, 1952 is recorded.

#### Application Demanded

1956 AIR 2, P 732

25 M SRABAMA J

Bhuvan Singh, Applicant v. State of Uttar Pradesh and another Opposite Parties

Criminal Revision No 321 of 1952 Cr. P. C. 1943

Criminal P. C. 3 of 1974, § 140 —  
Proceeding under — Directed at — Validity

Where the Magistrate in a proceeding under S. 140 cancelled the preliminary order of attachment of property and dropped the proceeding merely on the basis of police report without receiving evidence from parties or directing them to adduce evidence, removal of proceeding was not valid. In fact no valid trial order had been drawn in the proceeding under S. 140 subject 98 of the Criminal P. C. No evidence was received and parties were directed to adduce such evidence nor any enquiry was conducted. The mere statement by a party that there was no breach of apprehensions of breach of peace or the mere report of police that there was no breach and breach of violence or from the fact that the parties were peacefully living could not justify the dropping of the proceedings. In such case the Magistrate at any stage of proceeding had not conducted any enquiry nor recorded a valid trial order. A preliminary order could be cancelled only when there had been some materials before the parties or the opposite party made a claim that day, but not claimed nor had any evidence to meet claim to the possession of the property in dispute. 1975 Cr. L. J. 1028 (AIR 1976 (2) 1011 AIR 1977 SC 2403 1981 AIR 1981 121 and 1973 Cr. L. 4 1048 (Relinquished) (Para 28)

Case Reported	Chronological	Para
1980 AIR 1310		27
AIR 1977 SC 2403	1978 Cr. L. 107	34
1978 Cr. L. 1036	1978 AIR 1979 (2) 1011	30
1973 Cr. L. 4	1971 AIR 1972 (2) 1011	38

J. C. Pandey for Applicant A. Thapliyal and Lokendra Dutt for Opposite Parties.

1973 AIR 121 124

**ORDER** — The revision is dismissed against order dt. 17.3.1952 recorded by Sub-Magistrate Magistrate. Photograph in Case No. 376 of 1954 in proceedings under S. 140 Cr. P. C. by which the learned Magistrate ordered removal of the proceedings under sec. 140 Cr. P. C. in pursuance of the order of learned Sessions Judge dt. 11.3.1950 in Criminal Revision No. 4 of 1978 recorded by the S. B. S. Pandey against order dt. 10.4.1978 dropping the proceedings under Sec. 140 Cr. P. C.

1. It appears that there was a triangular content about house No 980 situated in Tara street Photograph.

2. Bhuvan Singh applicant and Km. Lila Walia opposite party No. 1 claimed the house as deposit in favour Km. Lila Walia further alleged herself to be an occupant of a portion of that house while the remaining portion is alleged to have been let out to Sh. S. P. Sharma opposite party No. 2. The statement of applicant Bhuvan Singh was that opposite party No. 1 S. P. Sharma was his agent and on account of a riot there arose an apprehension of breach of peace amongst the parties Km. Lila Walia had absolutely nothing to do with the house in dispute which was her exclusive property.

4. It was on the application of Bhuvan Singh dt. 23-02-1976 that the abovesaid proceedings were initiated under S. 140 Cr. P. C. The police report was issued by the Sub-Divisional Magistrate concerned. The case report submitted by the police is dt. 28-02-1976 which was to the effect that there was an apprehension of breach of peace and for M. C. Pandey the then S. B. S. Pandey recorded a preliminary order under S. 140 Cr. P. C. calling upon the parties to appear on 7.1.1976.

5. On 12-02-1976 another application also was moved by Bhuvan Singh alleging that a note of the triangular situation in attachment of the disputed property was desirable. On that application M. C. Pandey S. B. S. Pandey attached the disputed property under S. 140 Cr. P. C. on 26-2-77. It was further ordered that attachment shall continue until question of possession was decided by a competent Court.

6. Written statements were filed by the parties disclosing their cross-assertions.

7. Referring on 20.12.1977 to S. P. Sharma, opposite party No. 2 moved an application before S. D. M. that he used up by the name of Bhauri Singh as the arrested house and has stayed in another house and consequently there was no longer any apprehension on the behalf of police. He further prayed that the disputed house be delivered to Bhauri Singh. An affidavit in support of this application was also filed.

8. Learned S. D. M. raised a joined report from police which reported on 7.1.1978 that there was no longer any apprehension of breach of peace at Kori, Lala Waddys was a teacher in a school in village Pochha, where he resided. Sri S. P. Sharma has taken another house in his tenancy and shifted from house in dispute.

9. Accepting this report learned S. D. M. on order the attachment and ordered delivery of house in possession of Bhauri Singh.

10. Kori Lala Waddys applied for review of the order on the ground that the aforesaid order was not final but was subject to the result of revision (Criminal Revision No. 4 of 1978) already preferred by her.

11. Learned S. D. M. disposed the parties to appear on 31.1.1978 on orders. 13.1.1978 and disposed of this application by rejecting the same on 27.2.1978 on the ground that having passed the reports of police and heard separately of learned counsel for the parties there was no occasion to allow the application of Kori Lala Waddys. The orders of 19.1.1978 and 26.2.1977 were set aside on 11.3.1980 by learned revisional Court. It was however that another order was rescinded by learned Magistrate on 19.4.1980 by which learned Magistrate passed the records be consigned with an observation that there was no occasion to go behind his earlier order on the apprehension of breach of peace had ceased.

12. On 17.1.1982 the learned court for the parties were again heard and the proceedings were ordered to be revived in pursuance of the directions of this order of learned revisional Court. This order is being recalled in this revision.

13. Learned learned counsel for the respondent and Sri L. Debnath, learned counsel for the opposite party and learned A.G. A. and provided the record.

14. The impugned order has been recalled by learned. Adversely for the respondent on the ground that having been recorded in order on 19.1.1978 that there was no apprehension of breach of peace and having recommended same in his order dt 27.2.1978 it was not open to S.D.M. continued to revive the proceedings. An order was introduced by the Magistrate was not reversible as was held in *Badhawan Prasad Singh v. Kori Singh* reported in AIR 1977 SC 542. A perusal of the facts of this case would give rise to the conclusion that it was a proceeding under S. 141 Cr. P.C.

15. The complaint in this case had been disposed of by a judicial order by the learned Magistrate and so it was not open to him to revive or recall that order.

16. So the aforesaid authority is set aside.

17. This case ultimately relied upon by the learned advocate has been reported in *Gupta Roy v. State* (AIR 1980 SC 1414) which provided that the proceedings under S. 141 Cr. P.C. where a preliminary order has been given under S. 143 sub-sec. (1) Cr. P.C. and at a subsequent stage a party applies for non issuance of apprehension of breach of peace it was mandatory for the Magistrate to dispose of that application after affording an opportunity to the parties of proving the truth of such allegations. Rejection of such application without giving opportunity to parties was not an interlocutory order. Thus the authority developed was that it was a final order. Now when the Magistrate found that there was no apprehension of breach of peace and thus not reversible or reversible by law.

18. Learned counsel for the respondent further relied upon *Shri Mathur v. Raj* reported in 1972 AIR 994 (SC) 136, 1972 Cr. LJ 41. In that case Magistrate passed a valid order under S. 141 Cr. P.C. recalling the proceedings and delivering one of the parties in instant possession with directed to return in the name of law. The proceedings came to an end and magistrate could not exercise jurisdiction to recall the order order.

19. All these contentions are denied of

13. I have heard Sri R. P. Gupta and Sri

order. It is observed that the order passed in 1973-1980 have been so made by learned Sessions Judge in Criminal Revision No. 4 of 1979. Under the order of the Sessions Judge, the Magistrate was directed to proceed further with the matter and S.D.M. was bound to give effect to that order. In that order learned Sessions Judge rightly pointed out that the Magistrate kept the Kun. Lala Wadhwa under his close supervision who stated that her household efforts were lying at a point of the house. She also Mediation statement in her affidavit. As recorded in the record shall go to declare that learned Magistrate did not conduct any enquiry as to possession. The opportunity was afforded to the parties to adduce evidence. A look at the order itself shall go to declare that requirements of the parties were recorded in that order that they did not want to adduce any evidence at all. While Kun. Lala Wadhwa had already performed a remedy against the order in 1973-1979 dropping the proceedings there was no longer any justification in the Magistrate to declare in the subsequent order in 27.2.1979 that he was making his order as was reported on 10.4.1979. All these orders had been washed away by the order of the revising Court.

2. In fact no valid final order had been given in the proceeding under S. 144, sub-s. (1) of the Criminal P.C. No evidence was required for parties were directed to adduce such professional enquiry was conducted. It was held in *Cheng v. C. Singh* 1975 AIR 1239 (1975) Cal. 123 (1975) (P) that it was obligatory on the Magistrate to decide the matter after conducting an enquiry. The mere assertion by a party that there was no longer any apprehension of breach of peace or the mere report of police that there was no high level break of violence or trouble that the parties were peacefully though could not justify the dropping of proceedings. In fact since the learned Magistrate at any stage of proceeding had not conducted any enquiry nor recorded a valid final order. A preliminary order could be cancelled only where there had been some settlement between the parties or the opposite party made it clear that they had not claimed nor had any intention to assert claim to the possession of the property at dispute. Kun. Lala Wadhwa was convinced on the point that there was apprehension of breach of peace. The order in 1973-1979 recorded by learned Magistrate without hearing Kun. Lala Wadhwa was without justification. Since the challenged orders were illegal in learned Sessions Judge was not legally justified in allowing the

revision and ordering further steps to enter the matter in accordance with law.

3. In the case of the matter I do not find any merit in the revision which is dismissed. Intervenor order dated 6.7.1980 is vacated. Intervenor.

Feature dismissed.

1986 ALL 1 2 708

S. L. YADAV\* J.

*Mukul Mishra and another, Petitioners v. State of U. P. and others, Respondents.*

Civil Misc. Writ Petn. No. 1010 of 1980 (D/- 2.12.1980).

**Urban Land Ceiling and Regulation Act (33 of 1974), S. 1(3) — Declaration of surplus land — Ex parte order — Order passed without making a draft statement, and without serving notice for filing objections against draft statement — Order is without justification.**

Where in an ex parte order of declaration of surplus land was passed without giving a prescribed statement a draft statement along with a notice that objections might be filed against draft statement within thirty days is contemplated under S. 1(3), the petition, being machinery order would be liable to be quashed as without jurisdiction. (Para. 12)

**Case Related Classified Para**

AIR 1980 SC 589 4 11  
AIR 1980 AIR 1980 1980 Tia LR NOC 58 (P) 4 10

1979 AIR 1237 1979 AIR SC 589 AIR 1980 NOC 5 (P) 4 9

*Mrs. V. B. Singh, Laxmi Meekar Singh, for Petitioners, Standing Counsel for Respondents.*

**ORDER —** The petition under Article 226 of the Constitution arose out of proceedings under the Urban Land Ceiling & Regulation Act, 1975. For short the Act.

1. The facts leading to the present are that the petitioners, who known holders of plots Nos. 62 and 63 situate in village Chak Nisat, Taluk Chak, District Allahabad. These plots were situated in the control of the City of Allahabad and they were under the Municipal Corporation and were governed by the provisions of the Act. The petitioners submitted a return under Section 5(1) of the

CLR 1980 (1980) 1980 (1980)



that order under Section 10(1) of the Act in the official process every body including the petitioner will be deemed to have knowledge of the order. The procedure under Section 10(1) of the Act and the suggestion the court laid in terms of the ruling have been accepted and the various published materials in the court have stated that the order is supported by the constituted State Government and the notification is made in the official process. But also the draft statement is prepared and served on the holder of the land within the stipulated within thirty days or may be thereafter for explaining the delay and after considering the same, the court has decided by making statement in the draft statement in view of Section 5. Hence all that was subsequent to the service of notice on the petitioner. But as no notice was served on the petitioner and even the respondents did not deny the relevant material contained in the notification. I am accordingly of the view that no notice was served on the petitioner. Hence all the subsequent proceedings for determination of rights land and publication of the same was without jurisdiction.

9. In *Shamshul Khatun v. State of U.P.* (1978) AIR 1978 (supra) a Full Bench of the Court held in similar circumstances that the service of notice is contemplated by Rule 4 of the U.P. Impoundment of Copying on Land Holdings Rules was preliminary to the acquisition of jurisdiction in provided in the manner to declare the land is impugned. In view the notice is required by Rules was not served all the subsequent proceedings about the declaration of impugned land would be without jurisdiction and liable to be quashed.

10. In *Laxmi Narain Agarwal Prakash v. Comptroller of Tax*, U.P. AIR 1980 AIR 1980 (supra) a Full Bench of the Court in similar circumstances considering the effect of Section 2 of the U.P. Sales Tax Act, 1947 and Rules 11 of the rules framed thereunder held that the service of notice on the taxpayer was condition precedent. In the case notice was served not actually on the taxpayer but on some other person who was not connected with the taxpayer and in that connection it was held that the order proceedings were voided. Even though the taxpayer might have participated in the proceedings but that would not give any jurisdiction to the

authority to proceed in the matter and to declare the same against the taxpayer. The principle of estoppel was held not to be applicable not just on the basis of consent or waiver the jurisdiction can be conferred on any particular authority if it lacks the same.

11. In *Shardul Sahni v. Mohd. Ghous Khan Lassi* (AIR 1980 SC 2030) (supra) of the Supreme Court held that where a particular statute prescribes a mode to be followed in proceeding in any matter that any particular act has to be done in a particular manner and also suggests that failure to comply with the same would result in some consequences, a court is held that the requirement was mandatory. In the instant case as the statutory requirement was imperative of the procedure prescribed under Section 5(2) of the Act the draft statement was to be served in the manner prescribed on the person concerned along with a notice that the objection may be filed against the draft statement within thirty days. I am of the view that the process was mandatory. Further Rule 5(2) also prescribes that the notice is accompanied by Section 5 of the Act shall be served by registered post addressed to the person concerned. But the same was not done hence the Comptroller Authority has no jurisdiction to pass the order in part against the petitioner. I am accordingly of the view that the impugned order was manifestly erroneous and liable to be quashed.

12. In the result the process succeeds and is allowed. The impugned order dated 15-4-88 and 20-4-78 is also set aside. Even as the process dated 26-7-78 and 27-11-78 are hardly quashed. The Comptroller Authority is however directed to decide the matter which after setting the matter stand as that statement on the petitioner in accordance with the procedure prescribed. Under the circumstances, there shall be no order as to costs.

Process allowed

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1988 AIR 1, 1117

S. D. AGARWAL, J.

Ravi Kishore and others, Applicants v. State of Uttar Pradesh and others, Opposite Parties.

Criminal Misc. Appln. No. 624 of 1985. D. 20.11.1985.

Criminal P.C. 12 of 1974, S. 105(1)(a) — Complaint before Magistrate that alleged sale deed was executed by deceased (respondent-complainant) — Complainant subsequently filing suit to set aside sale deed — It was not shown that sale deed was filed in respect to civil Court — Held, that there was no suit pending when respondent was taken and hence her under S. 105(1)(a) was not attracted.

(Para 4)

Cases Referred	Chronological	Para
AIR 1983 SC 1053	(1983) 4 SCC 240	1983
On LJ 1988		
1983 Cr. LJ 34	1983 AIR 1917	3
1983 Cr. LJ 426	1983 AIR 1917	3, 4
AIR 1981 SC 1467	1981 AIR Cr.C 112	1981
On LJ 1015		1

Revenue Board for Applicants, Standing Counsel for Opposite Parties.

**CRIMINAL —** Respondent-complainant.

3. On Dec. 20, 1983 (1983) the opposite party No. 3 brought a complaint in writing against the applicants in the Court of the Magistrate, Gyaaspur District, Varanasi, commencing in brief that on November 25, 1983 the applicants had in furtherance of conspiracy, got a deed of sale executed in favour of Ravi Kishore (applicant No. 1) by Anand Prasad (opposite No. 3) representing, however, that the respondent-complainant (Shriya Kishore nee Kishori Lal) has contended that the complainant defile in fact, execute the deed in question and that Anand Prasad has represented for the complainant in this respect. In response to the complaint recorded under Ss. 200-202 Code of Criminal Procedure the accused were removed for the offence under Ss. 443, 467, 468 and 471 Indian Penal Code. The removal of the complainant under S. 204 of the Code has also been recorded. An application was made from the side of the complainant in the

trial Court under S. 204(b) of the Code. Section 204(b) provides that where any document is filed before any Court by the prosecution the particulars of every such document shall be included in a list and the original or the copy shall be called upon to attend or along the proceedings of such document. The complainant had got removed from the office of the trial Magistrate, the deed of sale executed dated Nov. 25, 1983. The application was made to inspect the document. To this there was objection raised from the side of the accused. The objection was overruled by order of the Court before dated August 25, 1985. Aggrieved the accused applicants have approached this Court under S. 402 of the Code.

3. Learned counsel contends that the Magistrate could not take cognizance in view of S. 105(1)(a) of the Code since there is a suit pending by the complainant in the Civil Court in the execution of the deed of sale dated November 25, 1983. It may not be disputed that though the offence under Ss. 417, 467 and 468 Indian Penal Code is not specifically referred to in Section 105(1)(a) there are covered by the said offence under S. 468 of the offence described in S. 467 of the Indian Penal Code and hence the offence under these sections is said to arise from the same transaction vide State of Karnataka v. Narasimha, 1981 AIR Cr.C 112 (AIR 1981 SC 1467). See Mahabir v. Rama Shankar, 1983 AIR 1917, 1983 Cr. LJ 34. Para Prasad Singh v. State of U.P. 1983 AIR 1917, 1983 Cr. LJ 426 and Gopal Chandra Mishra v. D. Raju Reddy, 1983 (1983) 4 SCC 240 (AIR 1983 SC 1053).

4. The material fact, however, is that as the learned counsel for the applicants argued, when the suit under civil Court was instituted by the opposite party No. 3 the complainant by execution of the deed of sale relating to the thing of the complainant dated Dec. 25, 1983, executed thereby in other words that on the date when the complaint was filed and also when cognizance was taken thereby by the Magistrate, there was no suit in civil Court pending. The law created under S. 105(1)(a) is to the effect that no Court shall take cognizance of any offence referred to therein when such offence is alleged to have been committed in respect of a document produced or given or treated as a proceeding.

in my Court. This document stands in the way of respondent being taken by the criminal Court in the particular situation arising as mentioned thereunder. Since in the present the respondent had been taken by the criminal Court (since order proceeding in the civil Court causing inconvenience and delay the document could be produced or produce evidence in the civil proceeding) it is obvious that S. 190 Cr.P. is not attracted. Secondly, since the material placed before court is not released that in the civil Court the respondent denied of taking land (Sd) in original. From this order impugned dated August 26, 1980, it is clear that the contrary that the deed of sale has been mentioned from the side of the complainant in the criminal Court from the office of the Sub-Inspector. In the document filed from the side of the accused in the Court below it is nowhere indicated that the deed of sale in original had been produced in the civil Court. For both these reasons namely that the respondent had been taken prior to the institution of the suit in the civil Court and since it is not shown that the deed of sale had been filed in original in the civil Court, the accused content, it is my opinion, stands in the way of S. 190 Cr.P. and is dismissed.

8. In *Ram Prakash Field v. State of U.P.* 1982 AIR 1001, 1982 Cr.L.J. 436 (Impugned order by the appellants) this Court held that the provisions of S. 190 Cr.P. that apply also to cases wherein offence of the nature specified therein is committed prior to the institution of the proceeding in which the complaint document is ultimately produced, verified and signature of such officer of the revenue of police complaint would be barred. This is not the point arising in the present. It is not of consequence that the document impugned had come into being before the suit in the civil Court was filed; the material factor within the respondent at the offence and then taken by the criminal Court prior to the institution of the civil suit and that it was foregrounded by virtue of anything contained in the provision. The complainant was not deterred from coming to the criminal Court in other words on Dec. 25, 1980, as he did for the offence namely that on that date there had been no proceeding under civil Court regarding deposit of the land in the suit impugned instrument of transfer. For these reasons there was merit in the contention for the accused applicants

that the respondent taken by the Court below in the matter is barred or rendered (Sdgs) is now barred the complainant had the right to avail of S. 190 Cr.P. of the Code in this case.

9. The application accordingly fails and is dismissed.

Application dismissed.

## 1980 AIR L J 738

**M H SAFED AND V N KHARE, JJ**

*M/s. Ram Prakash Field and another*  
*Prosecutors v. State of Uttar Pradesh and another* (Respondents)

Civil App. Writ Petn. No. 1164 of 1980 (Dr. 29.11.1980)

(A) *Misses and Misses (Regulation and Development) Act (47 of 1977), Sec. 2(33) and 19(3) — U.P. Misses (Regulation and Development) Act 1977, Rule 21 — Manufacture of bricks — Liability to pay royalty — Kite owners are liable even though they did not directly purchase or lease from Govt. to manufacture bricks.*

(Para 14)

(B) *Misses and Misses (Regulation and Development) Act (47 of 1977), Sec. 21 (3) and 19(3) Provide for imposition in 1978 — U.P. Misses (Regulation and Development) Act 1977, R. 21 — Exemption of rate of royalty for using coal in manufacturing bricks — No limitation as relation to any period of time — Rule valid when framed but power of enhancement could be exercised only once in four years under S. 19(3) since amendment — Held, that no being Rule is inconsistent with S. 19(3) Period four years could be substituted for ten years.*

(Para 26)

(C) *Misses and Misses (Regulation and Development) Act (47 of 1977), Sec. 21 (5) and 19(3) — U.P. Misses (Regulation and Development) Act 1977, Rule 21 — Manufacture of bricks — Fixation of amount of royalty — For month value — Consideration*

It cannot be contended that per month value of the estimated earth is related to the value of the land in a particular area. It is obvious that the cost of production of a material is a very relevant factor in determining its per month value. In the instant case the

RD/120/4951-52/1977

royalty paid by the prisoners for "utilizing" the issuance of royalty on the gold and silver strands 20 percent of the gross receipts value in the finished and the finished pieces is substantially questioned on this point.

(Page 26)

(D) *Mines and Minerals (Regulation and Development) Act (of 1957), Sec 28(5) and 19(1) — U.P. Mines Minerals (Conservation) Rules 1963, R. 54(1) — Manufacture of Bricks — Payment of royalty — Demand for royalty in advance under Rule 19(1) — It is valid.*

Both the manner of collection and the rate of royalty are prescribed by Rule 19(1) of the Rules. There is no prohibition under Rule 19(1) of the Act on the demand for royalty in advance. Rule 19(1) of the Rules under which royalty can be demanded in advance is lawful and it may be that a manufacturer is entitled to demand royalty in advance on the basis of estimated consumption on the basis of facts showing that the manufacturer is a mining lease or mineral concession and the person would be a not holder of a lease.

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Date Referred	Chronological Page
AIR 1967 J & K 68	11
AIR 1976 SC 1971	4
AIR 1975 All 366	9-9
AIR 1972 Paty 4, Mar 78-79	10

### 5.5. *Aggravation for Prisoners Standing Counsel for Respondents*

**5.5.1. *Aggravation*** — The prisoners Mr. Sam Brock Field and Mr. Ashwari and Mrs. are the respondents. Their respective a large number of other brickbats issued about the same time have been issued along with the same purpose. have challenged the demand for royalty for the use of earth for manufacturing bricks for the year 1963-64.

5. The controversy in this case is identical with the controversy in other cases. Though there are certain differences in facts in the case but they are not material. The point for which the royalty has been demanded, the same is the same of the other cases but that will have no effect on the decision as one of these cases.

3. The prisoners assert that they are carrying on business of manufacture of bricks

and they had obtained permits for the manufacture of bricks for the financial year 1963-64. The petitioners also agreed to the Government Order dated 27.3.1962 under which they have been demanded pay royalty on the cost of the 2000 per thousand bricks as provided under the Post Schedule to the U.P. Mines Minerals (Conservation) Rules, 1963. The petitioners to be referred to as the Rules.)

4. The prisoners contend that they are the owners of the land and as such they are not liable to pay any royalty.

5. It has been stated by the Supreme Court that the rights of the former owners, at the moment and minerals were extinguished with the enforcement of the U.P. Zoning, Abolition and Land Reforms Act, 1951. It has further been held that the right to the minerals had passed to the State as a consequence of the abrogation Act and the State is the owner of the minerals. See in this connection AIR 1976 SC 1971, *Bagmati Ganga*. See also *State of Punjab*.

6. In the case of *Sharma and Company v. State of Uttar Pradesh*, AIR 1977 All 198, it has been held that bricks earth is a mineral mineral within the meaning of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957. Therefore to be released to as the Act 1 and every person would have to pay the royalty for extracting earth for manufacture of bricks.

7. The prisoners state that they did not apply for the grant of permit during the financial year 1963-64 as all the brickbats owners had decided not to run their brickbats as per the government order then being made applicable the brickbats to include the permit in royalty but nevertheless a demand of Rs. 5,000/- for royalty has been made as against them for the year 1963-64. In the previous affidavit it has been stated that the prisoners continued to manufacture bricks during the financial year.

8. We with a common sense cannot place reliance on the prisoners' assertion that the prisoners did not manufacture bricks during the financial year 1963-64. It is apparent that the brickbats activities did not cease to operate in the financial year 1963-64 though a large number of brickbats owners did not obtain the permits. In any case, the work

petitioner cannot be decided under finding that the petitioners did not carry on the manufacture of bricks during the financial year 1982-83.

9. There is a further submission on behalf of the petitioner that even assuming that the petitioners contracted with a manufacturer of bricks, they are not liable to pay the royalty as they had neither obtained a lease nor obtained a permit for manufacturing bricks from the State. It is said that it is only those persons who had obtained the lease or the permit were liable to pay the royalty. The petitioners claim that they can only be prosecuted for having violated the rules for extracting earth for the manufacture of bricks. For this the petitioners have relied upon certain observations made in the case of *Sharma and Company v. State of Uttar Pradesh* AIR 1975 All 285 wherein it has been held that a person who extracts earth but obtains no lease or permit the royalty cannot be prosecuted for same only for prosecution.

10. Another decision on which reliance is placed is a Full Bench decision of Punjab and Haryana High Court in the case of *Anwar Begh Akish Lal v. State of Haryana* AIR 1977 Puh 414 and 416. In this case in paragraph 24 of the judgment it was observed as follows:

34. With declining business Mr. J. N. Kaurast on behalf of the respondent State contends that he has no answer to the contention raised on behalf of the petitioners. It is either of the no-agreement or contract is subsisting between the respondents and either of the petitioners. The legal position that subsistence of such a subsisting contract, no royalty can be levied is not controverted on behalf of the State. Consequently Mr. Kaurast claims, when that is the position two cases become support the levy of the royalty and that this royalty, in the nature of a tax against the person liable for its recovery. In terms it has been stated that at this point the two petitioners are entitled to succeed."

11. To the same effect was a decision of the Andhra and Orissa High Court in the case of *Sharma Kaly. Officer in Charge D.M.O. A.P.* AIR 1982 1 & 2, 80.

12. In view of these cases the proposition of Section 12(c) of the Act was upheld.

13. Section 12(c) of the Act runs as follows:

12(c) Whenever any person carries on mining, levied authority may ascertain from any person the State Government may recover from such person the minerals so mined or where such mineral has already been shipped the price thereof, and may also recover from such person the rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any levied authority.

14. In view of the proposition of Section 12(c) of the Act it must be held that the petitioners are liable to pay the royalty even though they do not obtain the permits or lease from the Government for the manufacture of bricks.

15. It has been urged that Rule 21 of the Rules which provides for the payment of royalty, is invalid as it is provided that the same shall apply in respect of any minerals mined within stated more than one year period of one year. It is submitted that under Section 12(c) of the Act which is the section which authorises the State Government to make rules the power to sub-section (2) of Section 12 provides that the State Government shall not maintain the rate of royalty in respect of any mineral mined for more than one or any period of four years.

16. The Uttar Pradesh Mineral Minerals (Conservation Rules) 1962 were published in the U.P. Gazette dated 14.4.1962 vide Notification No. 1579 M/XYLII B M to SE dated 20.4.1962. At that time there was no sub-section (4) in Section 12 of the Act. In other words there was no limitation on the power of the State Government to enhance the rate of royalty in any period of time. Sub-section (4) of Section 12 of the Act came into force on 12.5.1979. The rules were also effective when framed.

17. In this case the rate of royalty, right from 1962 was Rs. 1.50 per thousand bricks and stone amounting Rs. 2.50 per thousand bricks by the U.P. Mineral Minerals (Conservation) (Min. Amendment) Rules, 1982 which substituted a new Part Schedule which prescribed the rate.

18. What had happened was that the rate

of royalty was in Rs. 1.50 per thousand bricks but the brickkiln owners were given an option to pay as royalty in a fixed rate in lieu of paying the royalty on the amount of bricks manufactured by them. A lump sum amount was calculated on an estimated number of bricks to be manufactured by the brickkiln owners in a financial year. It was also said that the estimate for manufacturing bricks would be estimated in one year by 5 per cent a lakh means that the amount required to be paid in a lump sum in lieu of royalty would be enhanced by 5 per cent in each financial year.

18. The rate of royalty was enhanced only in 1962 when the first schedule was amended and the rate was prescribed as Rs. 200 per thousand bricks. There was thus no enhancement of rate of royalty within four years of 1962. Therefore, the argument raised about the invalidity of sub-rule 12 of Rule 21 or the Rules fails.

19. We may add here that sub-rule (2) of Rule 21 was valid when it was enacted. It came into conflict with the provisions of Section 15(1) of the Act when the proviso to Section 15(1) of the Act was added. We would read down Rule 21(2) so far as it relates to and would enhance four paise for two years in the Rule and bring it in conformity with the proviso to Section 15(1) of the Act but we are not driven to the situation in the instant case.

20. It has also been urged that the amount of royalty prescribed is excessive as it comes to more than 30 per cent of the per month value of the bricks manufactured. The proposition advanced is that the per month value is calculated by dividing the annual value of the land from which the mineral is being taken out. It is stated that —

For example one bigha area is equal to 10000 sq. ft. The value of one bigha was in the case of the petitioner is Rs. 8000/-

One bigha area produces 100000 bricks. Therefore, for 1000 of bricks the per month value will be Rs. 6 and 12 paise only. If 30% of it be calculated then it will come to Rs. 1 and 11 paise only per thousand.

21. It is further submitted in paragraph 24 of the writ petition that —

It is pertinent to mention here that 80% of the land in U.P. are situated over the land

land which served as or land by the brickkiln owners for about or four years in a row and in these years the value of the land is estimated as a rate from three to four thousand rupees per bigha and at least in these years the per month value comes more about half of a lakh has been estimated in the above mentioned paragraph.

22. The contention of the petitioner in paragraph 24 and 24(d) that the value of the per month value has been done in the contrary affidavit in paragraph 22 of the counter affidavit is rejected that —

The per month value of the mineral cannot —

the sale price at the point of manufacturing, at the cost of production of the product plus profit. In the present case the cost of the land had been included in the calculation. The labour cost in digging, mining, moulding, burning, handling etc. has not been added. According to the rate of Rs. 2/- per thousand bricks fixed by the State Government is well within the 30% of the per month value of the bricks.

23. It is not possible to accept the contention of the petitioner that per month value of the mineral such as mineral value of the land in a particular year. It is obvious that the cost of production of a mineral is very relevant factor in determining its per month value. The material placed by the petitioner in challenging the fixation of royalty, on the ground that it exceeds 30 per cent of the per month value of the mineral and the fixation cannot be successfully questioned on the ground —

24. That it is urged that the Rule required the petitioner to deposit the royalty for the total quantity of the mineral permitted to be extracted on the grant of the permit is invalid. In other words, the challenge is to the provisions of Rule 24(1) which makes such a provision. The argument that Section 15(1) of the Act provides that —

(1) The holder of a mining lease or any other mineral concession, granted under any rule made under sub-section (1) shall pay royalty in respect of mineral minerals removed or commercially have or to be acquired, managed, employed, constructed or otherwise in the rate prescribed for the time being in the rules



court to strike off the defence of the defendants. This application was allowed by the court on 8.1.1984. The defence was struck off. Against the order dated 7.1.1984, the present petition has been filed by the defendant applicant.

3. I have heard the learned counsel for the parties. Learned counsel for the plaintiffs has contended that, once the trial court decreed the suit struck off then the trial court stands struck off proportionately the defence. In the previous version of this case also the question was not raised by the plaintiff opposite party and as such the court below has acted judiciously and reasonably in the exercise of his discretion in striking off the defence.

4. Order XV Rule 3(a) of the Code of Civil Procedure provides as follows:—

(1) In any suit by a plaintiff for the recovery of damages for the defendant's negligence and for the recovery from him of rent or compensation for use and occupation, the defendant shall, as at before the first hearing of the suit, deposit the entire amount claimed by him to be due together with interest due on the rate of nine per cent per annum and whether or not he admits any amount to be due. In default, throughout the continuance of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the amount claimed by him to be due or the monthly amount due as aforesaid, the court may order in the premises of sub-rule (2) to strike off the defence.

Sub clause (2) of Order XV Rule 3 which is also relevant is quoted below:—

(2) Before making an order for striking off the defence the court may consider any representation made by the defendant in this behalf provided such representation is made within 10 days of the first hearing or of the expiry of the week referred to in sub-rule (1) in the case may be.

5. From a reading of sub-clause (1) of O. XV R. 3(a) the Code of Civil Procedure, it is clear that a defendant has been granted the right to strike off the defence. It is not a mandatory provision as a default, complete default has been left on the court to order

either default or to proportionately withdraw the facts and circumstances of each case.

6. Sub-clause (2) further gives thought to a party whose defence is sought to be struck off to make a representation within 10 days of the first hearing or of the expiry of the week referred to in sub-clause (1) in the case may be.

7. In my opinion, immediate representation is made under sub-clause (2) of O. XV R. 3 still if on the record there are facts and circumstances which appear to the court to inspect that the defence should be struck off. It is open to the court not to strike off the defence under the legislation but let the matter to the entire discretion of the court in which the case is pending.

8. Order XV Rule 3 of the Code of Civil Procedure came up for consideration before the Hon'ble Supreme Court in the case of *Bimal Chandra Das v. Gopet*, 1980, AIR 1981 SC 1497, 1981 AIR LJ 908. The Hon'ble Supreme Court held as follows:—

We must remember that an order under rule 3(a) striking off the defence is in the nature of summary. A serious responsibility rests on the court in the matter and the point is not to be exercised mechanically. There is a number of decisions noted in the court stating it not to strike off the defence if on the facts and circumstances already existing on the record there is good reason for holding so. It will always be a matter for the judgment of the court to decide whether on the material before it representing the absence of a representation under sub-rule (2) the defence should or should not be struck off. The word 'may' is material. It merely vests power in the court to strike off the defence. It does not oblige it to do so in every case of default. To this extent we are in line with the view taken by the High Court in *Prabhu Shrivastava* (1984) AIR LJ 1031 supra. We are of opinion that the High Court has placed an arbitrary condition on the plaintiff of clause (1) of Rule 3 of Order XV.

9. In the instant case, in the order it has categorically been stated that the suit for the period 1st February 1978 to 3rd March 1979 had been deposited on 15th February 1979. The suit in fact had been filed in the year

1977. There was manifest default in compliance with the provisions of O. XV B. 5 Code of Civil Procedure. In spite of this default the trial court proceeded to hear the case considering the defence of the applicant and thereafter passed a final judgment dated 29.11.1978. It is also apparent from the record that the trial court considered the defence of the applicant and it was thereafter that the decree for appointment was not passed by the trial court and only a decree for return of rent had been passed. Consequently, by applicant's failure to fulfill the obligation as laid down in the decree not to strike off the defence as required under O. XV B. 5 Code of Civil Procedure, the final court's application was made by the plaintiff opposite party for striking off the defence. No representation was made under sub clause (2) of O. XV B. 5 by the applicant. The status cases in this court in various only appear for the defence for appointment. In this case also the question of striking off the defence of the applicant was neither raised nor considered by the court and hence, the matter was remitted to the court below for a decision on the question as to whether a decree for appointment could be passed or not. On the facts and circumstances of the case it is consequently apparent that the trial court below when the last was pending before passing the decree dated 29.11.1978 did not consider the direction to strike off the defence. However, removal of the trial court has struck off the defence on default which had occurred prior to 29.11.1978. In my opinion, the court below has misinterpreted the general relief envisaged upon under O. XV B. 5 of the Code of Civil Procedure and has acted completely arbitrarily and unreasonably in the exercise of its discretion in striking off the defence when its predecessor who had passed the decree had originally on the basis of the facts and circumstances of the case did not strike off the defence. The submission made by the learned counsel for the respondent is accordingly well founded.

It is my intention to proceed on the basis that under O. XV B. 5 of the Code of Civil Procedure provides for deposit of monthly rent also during the pendency of the suit, it will be open to the plaintiff-opposite party to raise an objection before the court below in

connection with the default in the payment of rent in accordance with the terms of O. XV B. 5.

It is the result, the remedy is allowed. The order dated 29.11.1978 is set aside and the application (S.C.) moved by the plaintiff opposite party is hereby rejected. The court below shall now proceed to decide the case in accordance with the directions issued by this court in the judgment dated 17th April, 1980. Since the suit is pending since 1977, it is in the interest of justice that the trial court will dispose of the case very expeditiously. The parties are directed to file their case costs.

Remedy allowed

FOR ALL 1.1.79

(LUCKNOW BENCH)

PARMESHWAR DATTA, J.

Ram Lal, Petitioner v. Shree Balak and others Respondents

Division Bench No. 25 of 1981 Cr. 18 of 1982

Representational of the People Assn (RPA), So. Hill (M.C.) — Compliance of — Petitioner supplying incorrect and incomplete copy of election petition to elected candidate (respondent) and also not furnishing necessary copies of schedules, list of documents and affidavits which form part of petition — There is complete non-compliance of provision of S. 46(1) — Election petition is liable to be struck under S. 46(1). Case law discussed. (Para 13, 14)

Case Related Chronological Para

1980 (Division Bench No. 10 of 1981 Cr. 24)	1
1-1981 (AIR) Ch. V. C. Main v. Dr. Ziq Kaur	2
Singh Singh	3
AIR 1984 SC 385	4
AIR 1984 SC 946 (1984) 3 SCC 796	5
AIR 1984 SC 769	6

G. H. Singh, Varadachari, Kuldip Singh, M. Jaiswal and P. K. Pathan for Petitioner; R. C. Sankar and T. K. Chaudhary for Respondents

CD-DA/1032/14/1981/577



**ORDER** — In response to a notification issued 28.1.1985 under S. 15 of the Representation of the People Act, 1950 for general elections to the U.P. Assembly constituencies were filed by a Constituency No. 113 Sahaj Ghatehated Caste of district Bar Bareilly. After scrutiny 8 persons including the petitioner Ram Lal contested the election in that constituency. The scrutiny was done on 6.3.1985 and the respondent No. 1 Shree Balak was declared elected from that constituency. He had secured 25,736 votes followed by the petitioner Ram Lal who secured 13,641 votes.

2. Ram Lal filed the election petition on 20.4.1985 for declaring void the election of respondent No. 1 from 113 Sahaj Ghatehated Caste Constituency and for his declaration as an elected person. He levelled the allegations of corrupt practices giving bribe to the election returning officer and others occurring in the ground of vote being withheld, election of candidates of the parties officers in furtherance of the purposes of the election in the respondent No. 1 held the office of Deputy Minister of Uttar Pradesh State-Chairman of entering the supporters and the members (votes?) of the petitioner securing votes, reaching voting paper from the Assistant Polling Officer, securing more supporters than the authorized expenditure under the rules and so on.

3. The respondent No. 1 Shree Balak instead of filing a written statement moved Civil Miscellaneous Application No. 117(B) of 1985 praying for the dismissal of the election petition under S. 84(1) of the Representation of the People Act, 1950 to be called off. He alleged in the application that he got the original file inspected through his counsel and was surprised to note that the copy served on him was not only incomplete copy but also did not contain any copy of the Declaration and list of the candidates and affidavit filed by the petitioner along with the original petition, and that he failed to comply with the provisions of S. 83(3) of the Act.

4. The petitioner Ram Lal moved Civil Miscellaneous Application No. 120(B) of 1985 under S. 150 C.P.C. praying that before proceeding to hear complete correct and true copy of the

election petition to the respondent No. 1 within reasonable time. A counter affidavit has been filed along with that application and the same is directed to be in objection to the Civil Miscellaneous Application No. 117(B) of 1985. In the counter affidavit, it has been averred that it was by the mistake of the clerk of the court that the copy of the election petition which was served on the respondent No. 1 was incomplete since the copies of the documents prepared at the time of filing the election petition were less than the number of respondents. The copy was served on the respondent No. 1 and that he is now ready to furnish the true complete and correct copies of the election petition to the respondent No. 1.

5. Thus, it is alleged in the petitioner Ram Lal that a complete correct and true copy of the election petition was not served on the respondent No. 1. This copy which was served on the respondent No. 1 has been compared with the Civil Miscellaneous Application No. 117(B) of 1985. The page 11 of the corrected copy shows that the original petition contains parts 19 to 25. Where the part 19 of the copy is compared with the original petition, it is found that part 3 is page 13. The words the parts 19 to 23 of the original petition are missing in the amended copy. In the original petition itself the serial number of the paragraph 13 has been repeated. The page 12 of the copy contains the prayer and the prayer is typed and hand written in page 14 of the original petition. In the copy, the prayer No. 1 is that the election of respondent No. 1 be declared void and the prayer No. 2 is that the petitioner be declared elected in place of respondent No. 1. In the original, the prayer No. 1 is that the election of respondent No. 1 from 113 Sahaj Ghatehated Caste Constituency be declared void and the prayer No. 2 is that the petitioner be declared elected in place of respondent No. 1 from 113 Sahaj Ghatehated Caste Constituency. Thus, the copy is not complete with regard to the clause of prayer 1 also. The original petition has been verified by the petitioner but in the copy, the various contents which exist in the original petition are missing in the clause of verification. That the amended copy has been verified by the petitioner as a true copy of the election petition.

6. The petitioner Shree Balak files his original declaration and affidavits are numbered in pages 14 to 28 and 7 annexures have been

practical which are mentioned in pages 29 to 33. A hand-drawn document mentioned in page 34 of the petition. The affidavit accompanying the petition is mentioned in pages 44 and 45.<sup>17</sup> The copies of all these schedules, documents, etc. (as of documents) and the affidavits have not been furnished to the respondent No. 1.

7. In view of the aforesaid facts, it is to be seen that if the petitioners may want to grant an opportunity to file the papers in the writ or else, the petition is liable to be dismissed under S. 35(1) of the Act.

8. Section 44(1) of the Act lays down that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. The word 'shall' used in this sub-section is obligatory. It imposes upon a petitioner, as the part of the petition to file the attested copies under his own signature with election petition.

9. The last proviso to S. 44(1) of the Act lays down that where the petitioner alleges corrupt practices, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegations of such corrupt practice and the procedure thereof.

10. Section 45(1) of the Act lays down that the High Court shall make an election petition which does not comply with the provisions of S. 41 or S. 42 as S. 17<sup>18</sup> and the Explanation stipulates that an order of High Court dispensing an election petition under the rule-making (1) shall be deemed to be an order made under clause (a) of S. 40. The word 'shall' used in S. 45(1) also shows that any mandatory to furnish an election petition which does not comply with the provisions of S. 41 or S. 42 as S. 17<sup>19</sup>.

11. In the instant case, there has not been the compliance of the provisions of S. 44(1)(3) of the Act as rightly argued by the S. C. (Madras) as it was not done by the respondent No. 1.

12. The petitioners learned counsel contended that there has been a substantial compliance of law. He relied on the case of

*Jagan Nath v. Anwar Singh*, AIR 1954-BIC 1095 in which case it was held that non-compliance with the provisions of the law relating to the filing of all papers - viz. S. 42 is not necessarily fatal and can be cured. Otherwise, the case could have not having in the instant case where there has been non-compliance of S. 44 of the Act. It cannot be said that he did the substantial compliance of the provisions of S. 41 because he supplied an incorrect and incomplete copy to the respondent No. 1 and he did not furnish the necessary copies of affidavits etc. which form part of the election petition. It can be called a complete non-compliance of the provisions of S. 44 of the Act.

13. It was held in the case of *Widhishah Kumar Pandey v. Badaynath Yadav* AIR 1958 SC 305 that where an election petition can be maintained, the copies sent to the elected candidate must be a true copy. Being which there would be serious disadvantage of the manner contained in S. 41(1) which may be fatal to the maintenance of the writ petition. It was further observed that to determine the question of non-compliance of S. 41 (in the following principles are well established.

Every petition shall be accompanied by as many copies thereof as there are respondents in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

14. In view of the above, the election petition was held liable to be dismissed as untenable.

15. It was further held in the case of *L. G. Gopal v. Raj Prasad* and in the case of *Brishambhar Pruthi Prasad v. Raj Narain* (1964) 2 SCC 279 (AIR 1964 SC 555) that if an election petitioner files a number of copies some of which may be correct and some may be wrong, it is for them to see that the copies relied on the respondent is a correct one and that the respondent is not obliged to make through the mere record in order to find out which is the correct copy. It was further held that if out of the copies filed, the respondent's copy is found to be incorrect and even if it amounts to non-compliance of S. 41(1) which is sufficient to cause dismissal of the election petition at the instance under S. 46.

16. The respondent No. 1 referred to the case of *Sr. T. C. Mann v. Dr. Raj Kumar Sengupta* decided by the Court on 26-3-1983 in *State vs. Persons No. 12 of 1982* where a notice was not even issued and the petition was dismissed in terms of the non-compliance of the provisions of S. 91(2) of the Act.

17. Therefore, that is not the stage for permitting the petitioners to cover the delinquency and the C.M. Applications Nos. 11403 of 1982 is allowed and the objections and reply to C.M. Applications No. 10612 of 1982 are dismissed. The Revision Petition No. 20 of 1982 is also disposed of inasmuch as costs to the respondent No. 1 which are assessed at Rs. 2000.<sup>1</sup> The costs shall be paid out of the security money. Other respondents shall bear their own costs.

18. Substance of the judgment shall be sent forthwith to the Revision Commission and the Hon'ble Speaker of the Uttar Pradesh State Legislative Assembly. Certified copies of the judgment shall be expeditiously sent to the Revision Commission in duplicate.

*Prisoners dismissed*

1986 ALL. L.J. 737

S. N. SHARMA, J.

*Anand and others: Prisoners v. State of U.P. and another: Respondents*

Criminal Revision Nos. 1002 and 1013 of 1984 D/- 26-5-1985

(A) Criminal P.C. (2 of 1974), S. 205(2) — Arrested charged under Ss. 323, 325, 306, Penal Code — Dropping of proceedings under S. 306, Penal Code by Magistrate — Order of Magistrate erroneous in accepting the belief of Sessions Judge — Order is reversible — (Penal Code (41 of 1860), Ss. 323, 325 and 306) (Para 5)

(B) Criminal P.C. (2 of 1974), S. 401 — Revision — Order by Magistrate dropping proceedings under S. 306, IPC — Sessions Judge setting it aside and framing charge on basis of material before him under S. 307, IPC against accused — Order of Sessions Judge not liable to be interfered in revision

(C) 80 Cr.P.C. (2A) 10

The charge identified by the police under Ss. 323/324/325/306 of I.P.C. and Column No. 2 of the charge-sheet allowed them after the investigation, the case was found wrong in relation under Ss. 323/324/306 of I.P.C. However, subsequently on the revision after investigation, the Magistrate dropped the proceedings under S. 306 IPC as the charge sheet as to that offence was submitted by mistake. In revision against the order of the Magistrate, the Sessions Judge found that a prima facie case under S. 307 IPC was made out against the accused parties charged from accordingly, and in spite the order of the Magistrate, held that order passed by Sessions Judge could not be interfered in revision.

(Para 18)

**Case Related Chronological Para**

1984 All LJ 723	(1984) 2 Crimes 108	25
1985 All LJ 415	All. 1985 SC 156	1983 Cr. L.J. 829
1985 Cr. LJ 1047 (Allah)		24
All. 1976 SC 244		27

*Signed for Prisoners: A.G.A. Subedi, Kumar and H.P. Tinsaha for Respondents*

**ORDER** — Both these revisions are allowed and are being disposed of by this order.

19. Criminal Revision No. 1013 of 1984 is directed against order dt. 4-10-1982 issued by Sri B. L. Kulkarni learned Sessions Judge Sahasrapur by which he allowed Criminal Revision No. 101 of 1982 and set aside the order of learned Magistrate dt. 20-3-1982 in process with the trial of the case framed a revised charge under Ss. 323/324/325 IPC by dropping Section 306 I.P.C. In pursuance of the order of revisional court, the learned Magistrate committed the case to the Court of Sessions Learned Sessions Judge Sahasrapur charged under S. 307 I.P.C. against the respondents on 7-6-1984. This charge along with the order was issued on behalf of learned respondents in Criminal Misc. Application No. 5271 of 1984 under S. 482 Cr. P.C. This application was rejected on 12-6-1984.

2. Criminal Revision No. 1002 of 1984 is directed against the order dt. 14-5-84 issued by Sri R. K. Sonawane, learned Additional Sessions Judge, Sahasrapur who framed the charge against the accused under

§ 307 IPC in Sessions order No. 194 of 1962 *State v. Ramana and others*.

3. That Ashugiri Bhagwan Reddy is a report sponsor appointed in Police Station Ashugiri district Nellore on 26.11.1962 as T-45P-34 about the assault on Mubai Sadiques and Mubinsuge with father and sister. Ashugiri Bhagwan Reddy was alleged to have used force while the remaining witnesses were before.

4. Mubai Sadiques and Mubinsuge were medically examined on the same day. X-ray examinations of one arm and one leg were done.

5. On 12.12.1962 charge-sheet was submitted by investigating officer to the Probation order No. 322/323 and 324-IPC. Pending the case before the Magistrate, an application was moved by accused on 30.12.1962 by which the investigating officer was requested to state that there was no account of the existence of a charge-sheet had been submitted for an offence under § 308 IPC also. An extract from the case diary was also filed by the investigating officer then in support of his statement.

6. After the statement learned Magistrate dropped the proceedings under § 308 IPC vide order No. 363-1962.

7. Commissioner referred the matter to revision which was allowed as given above.

8. There being no appeal against the order, the learned Magistrate closed the case.

9. On behalf of revisioner, it was argued that order No. 363-1962 by learned Magistrate was simply an interlocutory order and no revision against the final order could have been made under 377(3) of Cr. P.C. The contention is not acceptable in law for the simple reason that when the learned Judge found that the Magistrate committed an error in issuing the certificate of Sessions Judge, the order was clearly reversible.

10. The next contention was that it was not open to a private party to prefer revision when the proceedings were initiated on a police report. The contention is also not worthy. The Sessions Judge could have entertained an appeal and examining any record of proceedings pending before any inferior criminal Court without as in his legal jurisdiction for the purpose of satisfying the correctness, legality or propriety of any finding

contained or order recorded or passed. In the learned Sessions Judge was well within his right to have examined the record and corrected the error apparent on the face of record.

11. The next contention was that the learned Magistrate was justified in examining the investigating officer and such examination was not legal. Charge-sheet was submitted under 34, 323/324/325 IPC. Section 308 IPC was added subsequently. It was open to the investigating officer to clarify the same. Learned Magistrate also could have interviewed the fact from the investigating officer.

12. Even at the stage of enquiry of the parties of parties, in exercise of the power under § 341 Cr. P.C., a witness could have been examined by the Magistrate. So while acting under § 308 Cr. P.C. the learned Magistrate could have applied the judicial mind to see as to whether it was a case exclusively triable by the Court of Sessions or not? So the Magistrate has not committed any illegality in examining the investigating officer.

13. In this connection, reference was placed upon the Hon'ble High Court from *State v. Achuthan* reported (1953) 1 Crim. 389 (1954 AIR 115) in that case the proceedings were initiated on a complaint by revisioner against one Achuthan under 302/307 IPC. After recording the statements of complainant and other witnesses, the learned Magistrate found that in the offence under § 302 IPC could not be committed by a single individual, as was the case of complainant, so the accused was not discharged. In the case was returned by Mubai Magistrate in the Magistrate concerned for passing appropriate order. That order was upheld in revision. Hence, the learned scope of enquiry under § 302 Cr. P.C.

14. It was further argued that in order to maintain the jurisdiction in such cognizance of the offence, learned Magistrate would have examined the Magistrate also in exercise of his power under § 205 Code of Criminal Procedure. Learned Magistrate had power to release the accused on bail after submission of the charge-sheet and before passing the committal order vide *State v. P. V. Lakshminarayana* reported AIR 1962 SC 429 (1962) AIR 11-429.

18. I have similarly considered three commentaries. Section 209 of Code of Criminal Procedure reads as follows:

209. Consideration of case in Court of Session when offence is able to be done, by it. — Where it is case submitted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session he shall —

(a) Commit after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of the Code relating to bail, demand the accused to custody until such commitment has been made; —

Under Practice — for clause (a) and (b) the following clause shall be substituted and be deemed always to have been substituted accordingly: —

(a) as soon as may be after complying with the provisions of Section 207, commit the case to the Court of Session;

(b) subject to the provisions of the Code relating to bail, demand the accused to custody until commitment of the case under Clause (a) and thereafter during and after the provisions of said. — L.P. App No. 16 of 1976 S. 6.

19. In a criminal proceeding, there are three major viz:

- (i) investigation
- (ii) enquiry and
- (iii) trial

In this regard, viz, as far concerned with the proceedings for investigation conducted by the police under Chapter XII of Code of Criminal Procedure

17. As regards the enquiry and trial which are the stages of proceedings before the Criminal Courts, Chapter XVIII of the old Code of Criminal Procedure which relates to the criminal proceedings, has been done away with and new provisions have been made in the new Code of Criminal Procedure which has practically abolished the criminal proceedings as now initiated on the police report. Commenced on a complaint relating to the offence exclusively triable by Sessions

Judge may be assigned case under Sec. 209 and 201 of Code of Criminal Procedure. In cases committed to police reports, report of relevant documents are to be supplied to the accused and as soon as the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is exclusively triable by a Court of Session, he has to commit the case after complying with the provisions of Section 209 of Code of Criminal Procedure. If it is not a case submitted on a police report, he may observe the rule incorporated in Section 208 since P.C. in complaint case etc. No further delay is to be done as it appears from the amendments proposed and made in L.P. The discretion of Magistrate is related to the report of report. His refusal to commit is substantiated by, initiation and prosecution, just like a group through a police. The scope of the exercise of that discretion was pointed out by the Supreme Court in *State v. Chaudhary* Union of India, reported in AIR 1976 SC 514 in the following words: —

In our view, the accused Magistrate has to look at the case, leave him custody to ascertain whether the case as disclosed by the police report, appears to the Magistrate to show an offence triable solely by the Court of Session. If he is not a magistrate of the Penal Code is quoted, he may look into that report.

20. A similar question came up for consideration before the Bombay High Court in *Dr. D. Sankar v. State of Maharashtra* reported 1981 Cr.L.J. 1811 (unreported).

The employment of the trial appears to progress with all these inevitable obstacles, which in such progress is deeper probe involving the process of apprehension of law shades. In other, therefore, an apprehension of the material in context which implicitly includes apprehensions of law shades involving of deeper probe as in the last ground and if it appears to the Magistrate of the Magistrate that there may be offence triable exclusively by a Sessions Court, or on such place reading such an offence is prima facie or on the face of the record is disclosed, then he has to opt to commit the case to the Court of Session.

21. I respectfully agree with these



displacement of existing flow and drainage Act 1973. Although the Appellants on a consideration of the evidence came to the conclusion that the need of the landlady was bona fides and he was entitled to the retention of the desired premises under S. 2(1)(a) of the Act. Adversely the appellants and the respondents are displaced persons and the Appellants held that since the appellants was living in rented premises there was no reason why he should be deprived of the beneficial enjoyment of his own property.

5. In *Shankar Kataria v. Laxmibai Kataria* (1980) 1 SCC 662 (AIR 1981 SC 669) the Court interpreting the analogous provision of S. 13(1)(g) of the Bombay Rent and Lodging House Rates Control Act, 1947 observed:

The Legislature by enacting Section 13(1) of the Act seeks to strike a just balance between the landlord and the tenant in that the order of eviction under Section 13(1)(g) of the Act does not cause any hardship to either side. The consideration that weighs in striking a just balance between the landlord and the tenant were indicated in a series of decisions of the Court of Appeal, interpreting an analogous provision of the Rent and Mortgage Interest Restriction (Amendment) Act 1920 in *TS Sreenivasulu* (1946) 1 gas (3) Sess v. Pinnu (1946) 2 ALR 294; *Pinnu v. Bell* (1946) 2 ALR 301; *Smith v. Pinnu* (1946) 2 ALR 375; *Chandru v. Sreenivasulu* (1947) 4 ALR 84 and *Katly v. Goodwin* (1947) 4 ALR 810. One of the most important factors in considering the question of greater hardship is whether other reasonable accommodations available to the landlord or the tenant. The Court would have to put in the scale other circumstances which would shake balance of hardship on either side including financial means available to them for seeking alternative accommodations either by purchase or by hiring one the nature and extent of the business or other requirements of residential accommodations as the case may be. It must however be observed that the existence of alternative accommodations on both sides is an important but not a decisive factor. On the issue of greater hardship the High Courts have uniformly held that the burden of proof is on the tenant. We are inclined to the view that on the terms of Section 13(1) of the

Act the decision cannot rest on mere location of proof. But both the parties must lead evidence. The question whether or not there would be greater hardship must be tested by putting the facts and circumstances before on both and consideration of each case.

6. A gloss reading of S. 2(1)(a) of the Act read with the 4th Proviso thereof and R. 16(1)(b) shows that the scheme under the Act is the same. One of the factors prescribed by R. 16(1)(b) is that if the landlady applies for eviction of the tenant on the ground that the accommodation is bona fide required by him for himself and the members of his family and if the landlady offers reasonably suitable accommodation (in the terms for the needs of his family) the landlady's claim for eviction shall be considered liberally. In the present case the Prescribed Authority and the Additional District Judge both after considering the comparative hardship issue to be raised in the instant case the landlady recorded a finding that on the basis of the application the landlady would be put to greater hardship.

7. There was no infirmity in the order of the Prescribed Authority or that of the learned Additional District Judge. The refusal of the application of the landlady under S. 2(1)(a) of the Act would undoubtedly cause greater hardship to him as that would deprive of his beneficial enjoyment of his own property. In such a case it could not be said that the landlady had not fulfilled the requirements of the 4th Proviso to S. 2(1)(a) of the Act. The High Court adversely construed an error in mentioning the discharge of the Prescribed Authority and the learned Additional District Judge on the ground that the landlady had failed to fulfil the requirements of the 4th Proviso to S. 2(1)(a) of the Act.

8. We wish to record that Shri B. B. Midmore learned counsel for the appellants made an offer that the stated premises in occupation of the appellants may be given to the respondent who is his tenant with charge. We think that this was a very reasonable offer and should be accepted. Shri Suresh Acharya learned counsel appearing for the respondent stated that the respondent was not agreeable to be proposed. We therefore found the parties on merits.

4. In the view that we take, the agreed upon process and pathway, Weir made the judgment, and order of the High Court and certain that of the Prescribed Authority. Various get true of all. And as difference Judge Verran's decision the release of the accommodation under S. 2(1)(b) of the Act. We stated that the Prescribed Authority. Various shall see no application being made by the parties after the stated premises occupied by the applicant in favor of the respondent with the consent of the landlord. If no such matter is forthcoming, the Prescribed Authority shall also presumably make themselves accommodations to the existing party; but his cooperation in such terms as he may deem fit.

7. We further desire that the order of revenue shall not be increased for six months in the event the respective franchisees want undertaking within four weeks from today. Both the parties shall make mistakes, move on the Financial Authority Vietnam for permission to exchange their respective business on the terms we can agree.

1000



1999

**Abstract**

### 5. SECTOR AHEAD AND BEHIND

Major Editor: Professor: Agostino  
 Editor: Agostino

Medicine Company, Wyndham House, 100 Bedford Street,  
 Tel. 344, 1988.

**Issue: Minority and Guardianship Act (CO of 2004), Sec. 4, 6 – Father (stable) living with juvenile claiming his custody – Father taking away child when he was two months old – Father had few years character – Child and Criminal proceedings initiated by mother/child alleged to be dropped – High Court would not grant custody of child to mother, since no, in well jurisdiction (Constitution of India, Art. 302)**

<sup>1</sup> *Where a person has been of Indian origin was held by section 10 of the Criminal Justice Act 1967.*

child of slaves, free, poor, black, extremely dis-  
advantaged, raised by his father, who for various  
reasons did not care and criminal proceedings  
instigated in the meanwhile against the father  
were allowed to be dropped and there was  
no allegation on the petition that the child was  
not properly looked after by his father or that  
he was not receiving proper education. The  
High Court should not grant the custody of the  
crime child to his mother at least in view  
of proceedings. A.D. 1982 (1982) 100 S.R. 101

Class	Behavioral	Chronological	Physical
AJBE, 1997 Middle Pre-III			14
AJBE, 1971 Middle III			15
AJBE, 1969 Middle III			17

J. E. Serrano, for Plaintiff-Defendant  
Sociedad General de Mercaderías

**2. SAUDER ARRIAS, E.** — The influence of the nature of tobacco-organ solvents in the synthesis of the Carbazone.

3. The level of the case may not be raised or fixed.

3. Inst. Mikhailovskiy, Irkutsk, who is employed as a Typist in the Vostochny Sibirskiy Sotsializm, Leningrad was married to opposite name. No. 1 Amer. Komsomol'skaya ul. 19-2-79

4. A van born to them on 22-9-88 at the Duffryn-Walpole Leisure Cent. Maethilda Scrimgeour had Agent Kumar Satia lived together at the latter's house up to 22-9-88 whereafter Sat. Maethilda Scrimgeour on account of relations having become strained, stayed at her parents' house in Cardiff during the interim child with her. Agent Kumar Satia and her parents visited Maethilda Scrimgeour at Cardiff on 30-5-89 for a compromise. It is noted that when Sat. Maethilda Scrimgeour had been called upon by her mother, Satia, picked up the baby, i.e. Master Maethilda was a premature in this case and left England. It is further stated that opposite party No. 1 and her family members were apprehensive for the return of the child but they found that the child was in their custody. On 5-9-89 an FBI was lodged against the opposite parties under Sec. 303 and 303 T P C. A search warrant was also issued for Master Maethilda could not be



received from Madrubala-Servantes had to give up the care of the case under Section 363/365 I.P.C. on account of the claims held out to her. Her father, who was also doing the paperwork for her, was awarded on 12-1-82. A suit was also filed by Mrs. Madrubala-Servantes under the Guardianship and Wards Act for the custody of the child but the case was also dropped by her on account of the claims held out to her and because she had come to know in the meantime that the child had been placed in the custody of somebody else, she presently goes to know that the child was living with the opposite party at their house No. 128 Avda. Vapor P. S. Santa Lucinda, Luchano and, therefore the person in the name of Justice Cooper has been filed for the custody of that child. It is stated that opposite party No. 1 who was in previous divorce has been removed from service while Mrs. Madrubala was merely aware that Rs. 100/- per month was being received, as a foster parent to educate the child and to look after her.

5. It is not disputed that Marcey Menzies has been living with his father since the time of his minority. Admittedly when the child was only five days old the father (Aguiar Kuamir-Sanchez) used to have brought him to his place. It is also not disputed that the proceedings under S. 363/365 I.P.C. which were initiated by Mrs. Madrubala-Servantes have now been dropped. The provision filed under the provisions Guardianship and Wards Act has also been dropped. As a matter of fact, as stated by the learned counsel for the petitioner the person under the Guardianship and Wards Act has been dismissed in default.

6. It is also not disputed by Mrs. Madrubala-Servantes that Aguirre-Kuamir-Gutierrez has since filed a divorce petition under the Hindu Marriage Act against her and that case (Reg. No. 102 of 80) is pending in the Court of Civil Judge Luchano.

7. It is to the above circumstances that the question of necessity of the present person has to be examined.

8. Section 4 of the Hindu Marriage and Guardianship Act 1928 (the short Guardianship Act) defines what guardian is. It is as under:

4 (a)

(1) guardian means a person having the care of the person of a minor or of his property or of the both his person and property and includes —

(i) a natural guardian;

(ii) a guardian appointed by the will of the minor's father or mother;

(iii) a guardian appointed or declared by a Court; and

(iv) a person empowered to act as such by or under any enactment relating to any Court of wards.

Natural guardian has been defined in S. 4(c). It provides that natural guardian, when the child is a minor is defined as:

5. Section 4 is in the following terms:

4. The natural guardian of a Hindu minor in respect of the minor's person as well as in respect of the minor's property (including his or her undivided interest in joint family property) is —

(a) in the case of a boy or an unmarried girl the father and after him the mother, provided that the custody of a minor who has not completed the age of three years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl — the mother and after her the father;

(c) in the case of a married girl — the husband, provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section —

(i) if he has ceased to be a Hindu; or

(ii) if he has completely and finally renounced the world by becoming a hermit (renounced the world by becoming a hermit).

Explanation: In this section, the expression father and mother do not include a step father and a step mother.

10. Section 4 indicates that natural guardian of a boy or an unmarried girl is the father after him, the mother. There is specific provision made in respect of a minor who has not completed the age of five years. It is provided that the custody of such minor shall ordinarily be with the mother i.e. it is a father is alive and is, in all respects, fit to act as guardian, the custody of the child who has not

completed the age of five years shall be with the mother. The legislature appears to be conscious of the fact that for as long as the custody of children's body was in an important, than the care of his father. A child tends to live in the lap of his mother. He builds up the future in his mother's lap. Ordinarily, therefore, the mother is to have the custody of the child who has not completed the age of five years. It is important to note that mother's right to custody of child who has not completed the age of five years is qualified by the words "ordinarily," which clearly suggests that an appropriate case the mother can be refused the custody of the minor, the paramount consideration is each case being the welfare of interest of the minor.

11 In *Smt. Chander Prakash v. Prem Nath Kapori*, AIR 1961 Delhi 283 the custody of the minor who had not completed the age of five years was given to the mother in accordance with the provisions of S. 4 of the Guardianship Act. In *Smt. Radhasing v. Nandappa B. Madhwar*, AIR 1971 Mys. 49, it was held down that child's welfare was the primary factor and, therefore, unless there was special circumstances under S. 4 of the Guardianship Act the custody of the child is to remain with the mother.

12 In view of the above, what is to be seen in the instant case is whether there are special circumstances warranting the child to be taken with the father.

13 It will be noticed that the child was born at Lucknow on 22.7.58. Smt. Mathabada Srinivasa left her husband's place on 22.5.61 i.e. when the child was hardly ten months old. A week later, however, the child is said to have been brought back by Agnes Kumar Sanku to her house. The legal machinery was set on to be started for the first time on 5.9.61 when an FIR was lodged under S. 362(a) IPC against Agnes Kumar Sanku and her near relatives. We do not know what action was taken in the criminal proceedings but from the pleadings contained in the civil petition it appears that the child for whose custody a search warrant was also issued, was not even read from his father's house. The petition filed under the Guardianship and Welfare Act for the custody of the child was allowed to be dismissed in default. This happened, as the largest counsel for the petitioner says

approximately 1965. Therefore a divorce petition (Sug. Pet. No. 183 of 64) is said to have been filed by Agnes Kumar Sanku against Smt. Mathabada Srinivasa. The suit being duly contested by Smt. Mathabada Srinivasa, is that suit, although she has moved an application under S. 14 of the Hindu Marriage Act for payment of alimony, she has not filed any application under S. 13 for the interim custody of the child. A copy of the plaint was placed before us by the learned counsel for the petitioner in which one of the grounds mentioned (subpart of Agnes Kumar Sanku) is that Smt. Mathabada Srinivasa had deserted him and he was Master Minsari. It is not disputed that Master Minsari can constitute a valid ground for divorce under the Hindu Marriage Act. The question whether Smt. Mathabada Srinivasa had actually deserted Agnes Kumar Sanku or her child, Master Minsari, is a question of fact which requires the attention of the trial Court in Sug. Pet. No. 183 of 1964. The fact remains that the child has all along been with the custody of his father Agnes Kumar Sanku since 1961. Agnes Kumar Sanku has thus brought up the child since the child was hardly ten months of age. The age of the child has been decreed in the month of the person is four years. If the child has been living with his father for the last 25 years, it would not be in the welfare and in the interest of the minor to place him in the custody of someone else, in fact that mother has married another Smt. Mathabada Srinivasa.

14 A Divorce Bench of the Madhya Pradesh High Court in *Smt. Ram Vaid v. Ram Vaid*, AIR 1962 Madh Pra 51 has laid down as under:

In matter relating to the custody of minor, it is well settled that the paramount consideration is the welfare of the minor and accepted right of his or that party. The proviso to Section 13(a) of the Hindu Marriage and Guardianship Act, 1956 also states it being presumed that mother's petition for a child of tender age is admissible. There may however be circumstances in a particular case which rebut the presumption and in such a case welfare of the minor, although of tender age, has to prevail custody to the father.

15 The learned corpus parson for the custody of the child is the above Madhya Pradesh case was cited by the mother's

years after she had left her matrimonial home leaving her 11 months old child in the custody of her father. Later than the child had continuously been living with the father and had eventually stopped recognizing her mother. It was at these circumstances held by the Indian/Patrols High Court that father should assume the custody of the child as the husband of the child, by the mother would cause many problems as the child will not associate with the mother's company and he starts recognizing her as his mother.

16. In the instant case the child has been brought before the court by way of the age of ten months. As noticed earlier even the proceedings were initiated for the custody of the child after a considerable lapse of time. The child, admittedly, was taken away by his father in 1981, but the present petition has been filed in 1983 i.e. after about two years although Civil and Criminal proceedings which were initiated in the meantime were allowed to be dismissed. There is no objection on the part that the child is not being looked after by his father or that he is not securing proper education. In the view of the matter the court of the fact that the Indian/Patrols Division is the natural mother, the custody of the child cannot be given to her at least in the present proceedings. She may also initiate the appropriate application in the civil suit for getting out of the custody of the father.

17. In view of the above the petition is dismissed.

**Prisoners demand**

1986 ALL LJ 185  
(CLACKNOW BENCH)  
D K SHA J

**Shri Shree Ojha and others v. Prisoners v. Shri Sarda Kumar Mahto v. Respondents.**

Writ Pet. No 4260 of 1983. D/ 18/10/1985.

1(A). U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (11 of 1975), ss. 11, 14(1), 5 - **Landlord's application on ground of default in payment of rent and arrears of rent - Tenant seeking his possession of**

CD/ED/1624/16/1985/1007

flat floor on its being offered as alternative accommodation by landlord who wanted ground floor - Rs. however, paying policy amount as rent and deposit liability to pay rent at rate paid by earlier occupant - **Assessment of buildings** - Tenant liable to pay assessed letting value of building as rent - Failure to pay that made the **landlord**.

(Para 5)

1(B). Provincial Small Cause Courts Act (11 of 1907), s. 21 - **Power of provincial Courts in suits** - Trial Court charging of principal question of non-payment of rent under a local sub-exception of law - Provincial Court is entitled to its findings and orders at correct finding. 1984 ALL LJ 179-180, 181 et seq.

(Para 8)

**Cases Related - Chronological Para**  
1984 ALL LJ 179 - (1984) 1 All Ind Cr 579  
AIR 1984 SC 1487

P. Kail, R. K. Srivastava and Mathuram, for Prisoners. D. K. Sarda, C.K. Sarda, J.N. Agrawal and S.R. Kalia, for Respondents.

**ORDER** - The writ petition has been dismissed upon the order dated 18.10.1985 passed by the Hon. Additional District Judge Lucknow allowing the revision preferred by opposite party.

1. The dispute relates to House No. 36/16 situated at Laxmi Bahadur Road, Hazratganj, Lucknow. The opposite party Shri Sarda Kumar Mahto is admittedly the landlord. The tenant was Dr. K. C. Ojha. Dr. Ojha was in possession of the ground floor on a monthly rate of Rs. 120/- while the first floor was occupied by Dr. A. B. Dhanraj on a monthly rate of Rs. 175/-. The first floor of the house was got vacated by the landlord through an application numbered 21 dated U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1975 (hereafter referred to as the Act). The landlord himself vacated the ground floor and it is alleged that before the Provincial Authority the alternative accommodation was offered by the landlord to Dr. K. C. Ojha. Dr. K. C. Ojha in pursuance of the order passed by the Provincial Authority, entered into possession since the first floor house the ground floor and the ground floor was occupied by the landlord on 25th March 1977. It may be mentioned that question of

rent was not determined by the Prescribed Authority. However, Dr. Ojha contended the rent at the rate of Rs. 187 per month which was otherwise a reasonable amount and was reduced by the landlord. After a lapse of five months the landlord served a notice for arrears of rent and expatriation thereupon the filed suit in the court of Judge Small Causes. The learned Judge Small Causes held that the defendants was not liable to pay Rs. 175 per month as rent to the Prescribed Authority by agreement or he had been obliged parties to pay the standard rent fixed. The parties did not get the standard rent fixed, hence the plaintiff was not entitled to claim rent at the rate of Rs. 175 per month. He further held that the defendants cannot be held as defaulters. On those findings he dismissed the suit. The respondent herewith went up in the revision and the suit revision has been allowed. Thus to have this provision in India the Court under Art. 226 of the Constitution.

3. Have heard the learned counsel for the parties and gone through the agreement and even averments made by the respondent parties. Learned counsel for the petitioner urged that since no standard rent was fixed. Therefore, there was no agreed rent and the parties agreement could not be deemed as the ground that petitioner had defaulted in paying the arrears of rent. I am not impressed by the argument. The standard rent has been defined in § 20A of the Act which reads as under:—

20A. Standard rent, subject to the provisions otherwise in A and B) means—

(a) in the case of a building governed by the old Act and let out at the time of the commencement of the Act—

(a) where there is both an agreed rent payable thereafter at such commencement as well as a reasonable amount rent which is the Act—the same meaning as in section 20 of the old Act as provided in the Schedule; the agreed rate of the reasonable amount rent plus 25 per cent therein; otherwise a greater

(b) where there is no agreed rent but there is a reasonable amount rent, the reasonable rate plus 25 per cent therein

(c) where there is neither agreed rent nor reasonable amount rent, the rent as determined under section 9

(d) in any other case, the assessed letting

value for the time being in force; and in the absence of assessment, the rent determined under Section 9

It has been admitted that there was a long possession of the house. It is also admitted that the agreed rent had not been paid by Dr. Ojha. It may be mentioned that during the trial Dr. Ojha died and his heirs stepped into the shoes of Dr. Ojha's deceased as under—

(i) assessment in relation to a building means the assessment or proportionate assessment as the case may be of the letting value fixed by the local authority having jurisdiction and assessment shall be construed accordingly

4. It may be mentioned that a tenant is bound to pay the rent for the use and occupation of the premises. Learned counsel for the petitioner could not justify that at so low the rate of Rs. 187 was assessed which was primarily occupied as a room of Rs. 175 per month. The learned revisional court took real ground and adjudicated the dispute. In my opinion there was no error in determining the rent at Rs. 175 which was to be paid by the petitioner.

5. Learned counsel raised my attention to the order passed by the Prescribed Authority and urged that the rent was assessed by Dr. Ojha and the authorised had the opinion upon. I have perused the order dated 14-12-1976 passed by the Prescribed Authority and I find that there is a clear misapprehension by the Prescribed Authority that what should be the new rate premium amount to be adjusted at this stage of application for release of an accommodation. There is nothing in the order from which it can be inferred that it was for the landlord to pay the rent fixed determined by some competent authority. The standard rent has already been defined above and liability to pay the same was clear. If the building had not been assessed, probably, a case could have been made out by the petitioner that notwithstanding the existing rent assessment of the building had been made and hence the liability was there on the tenant to pay the same to the landlord. The argument, the fact support from § 9 which means no determination of standard rent. Subsection (1) of § 9 of the Act reads as under—

In the case of a building to which the Act was applicable and which fell out at the time of the commencement of the Act in respect of which there was no any reasonable amount not an agreed rate as in any other case where there is neither any agreed nor any amount as fixed the District Magistrate shall on an application being made in that behalf determine the standard rate.

Learned counsel for the petitioners could not point out that the case of the petitioners fell within the scope of determination of standard rate. In the very other matter the submission advanced by the learned counsel for the petitioners is totally devoid of merit.

4. It was also contended that the learned Additional District Judge while hearing the revision could not call the evidence. This argument also in view of decision of the Supreme Court does not stand to reason. There are cases in which the revisional court can call the evidence if the Judge (Small Cause) has failed to look into the evidence on record. It may be mentioned that the Supreme Court in *Agarwal Prasad v. Jagdeep Devi* (1964) 2 All India Cr. 479 (1964 All LJ 176) has laid down a proposition that in certain circumstances the revisional court is entitled to call the evidence particularly where the trial court followed under misapprehension of law. In the instant case the principal question of non payment of rent was disposed of by the Judge (Small Cause) under a wrong misapprehension of law. The revision therefore taken by the revisional court is correct and in accordance with law.

7. Lastly it was urged that there is poverty of accommodation primarily sufficient and therefore sometime may be allowed to the petitioners to find out an alternative accommodation. This time has already been granted from time to time but still in view of the acute shortage of accommodation through the property someone to house the petitioners is requested on behalf of the petitioners. I therefore allow time to the petitioners to vacate the premises on or before 31st December 1965 on the condition that they will regularly keep on paying damages at the rate of Rs. 175/- per month for the use and occupation of the premises. Secondly they will not cause any damage to the property. In the event of default of any of these conditions it

will be open to the respondents to vacate the premises. If the petitioners fail to vacate the premises on or before 31st December 1965 the Judge (Small Cause) will evict the petitioners and put the respondent into possession by such force as is necessary.

8. In view of abovementioned there is no merit in the petition which is accordingly dismissed but the petitioners are allowed to continue to stay in the premises till 31st December 1965 on terms and conditions mentioned above.

Petition dismissed

1966 ALL LJ 1347

H N SETHI, J. and  
P N DUBEY, J.

*Shah Bhanji Petitioners: Agarwal Regime of Cooperative Societies and others Respondents*

Civil Misc. Writ Petn. Nos. 3643 to 3646 of 1975 D.P. 13 of 1975.

**Co-Operative Societies Act (XI of 1964), S. 70 — Arbitration — Dispute as to whether debitors were liable to pay amount claimed by society — Arbitrator orders payment for recovery of amount from members of society to whom debitors had alleged to have paid back loan.**

An Arbitrator under S. 70 of the Co-operative Societies Act is entitled to decide only such disputes as it referred to him under the provisions of the Act. In the instant case the only dispute which was referred to the Arbitrator was whether or not the debitors were liable to pay the amount claimed by the Co-operative Society or not. The controversy whether or not the liability for the said amount rested with the members of the Society to whom the debitors alleged to have paid back the loan was not referred to the Arbitrator. Held that in the circumstances it was not within the domain of the Arbitrator or for the Agarwal Regime to pass any collective order for recovery of the amount against the members. (Para 8)

Changa Singh for Petitioners, Standing Counsel and P. S. Sanghal for Respondents, CHANGA SINGH & SANGHAL

**H. N. MITTAL, Assesee-CI** — In all these four previous prisoner Shah Basm claimed receipts under protest. Why not be disposed of like a common judgment?

1. Prisoner Shah Basm was a retiree of Bhagpur/Jalgaon Suktan Sewa Ltd. (retail). Bhagpur/Jalgaon No 3 Khana Singh vs W/o. Prisoner No 3443 of 1976. Monthly respondent No 3 vs W/o Prisoner No 3444 and 3445 of 1976 and Month Ad respondent No 3 vs W/o Prisoner No 3446 of 1976 had appeared from Bhagpur/Jalgaon Suktan Sewa Ltd. Subsequently a controversy was raised as to whether or not the said respondents had repaid the amount borrowed by them and if that repaid loan reference were made under section 70 of the I.P. Cooperative Societies Act for refunding the claim of said Bhagpur/Jalgaon Suktan Sewa Ltd. The absence of respondents No. 3 in all these cases was that they had paid back the entire amount of loan to the prisoner who was the member of the society. They also had receipts made to have been obtained from the prisoner in support of these respondents' cases. The Arbitrator decided all the four references on 28.12.1974 by making awards based on similar reasoning. The Arbitrator observed that in all these cases Shah Basm had given evidence to the effect that he had either received any amount from the three debtors or he did not and any receipt to any of them. The Arbitrator accepted the statement made by Shah Basm in that regard and made an award against three debtors and accepted the claim made by the society.

2. Apparently he then debtors went up in capital before the Assistant Registrar Cooperative Societies. While the appeals were pending the three respondents took the stand that the documents purporting to be the receipts from the prisoners filed by them before the Arbitrator appeared to have been fabricated by forged documents. They contended that Shah Basm had in his statement before the Arbitrator admitted his signature on the receipts which had been filed by them. But that the receipts which are now under dispute on the record actually did not bear any signature. It, therefore, appeared that the receipts that were available on record had been subsequently fabricated. The Assistant Registrar appears to have accepted the

statement made by the debtors and held that Shah Basm had, before the Arbitrator admitted his signature on the receipts filed by the debtors and that these receipts had been subsequently removed from the record and substituted by forged documents. In the circumstances he concluded that in fact the three debtors had paid back the entire amount of loan taken by them to prisoner Shah Basm who had fabricated the same. The Assistant Registrar accordingly allowed the appeals filed by the three debtors and decided that the amount involved be recovered from Shah Basm, the present prisoner.

3. Apparently Shah Basm has approached the Civil for relief under Article 136 of the Constitution of India. Learned counsel appearing for the prisoner Shah Basm informally contended that the appellate court had erred in denying recovery of the amount involved from Shah Basm for following two reasons:—

(i) No dispute regarding recovery of any amount by the Co-operative Society from Shah Basm had been raised, the arbitrator. The Assistant Registrar therefore had no jurisdiction to direct recovery of any amount from him.

(ii) There was absolutely no material on the record before the Assistant Registrar to believe that Shah Basm had before the Arbitrator admitted that he had actually signed the receipts filed by respondents No. 3. The statement made by the Assistant Registrar on the issue of signature raised on behalf of the three debtors did not constitute evidence for reversing any finding by the Assistant Registrar.

4. Inasmuch as we are inclined to accept the first argument raised on behalf of Shah Basm, it is now necessary for us to examine the evidence against us on the question as to whether or not the finding recorded by the Assistant Registrar with regard to the receipts made has been obtained by the three debtors on basis of any evidence or not.

5. So far as the first reference is concerned it cannot be disputed that an Arbitrator under S. 70 of the Co-operative Societies Act is entitled to decide only such dispute as is referred to him under the provisions of the Act. In the present case that

only dispute which was referred to the Arbitrator was whether or not the bank debited more moneys to pay the amount claimed by the Cooperative Society to it. The cooperative society is liable initially for the said amount (as such bank Rate was not referred to the Arbitrator). In the circumstances it was not within the domain of the Arbitrator or of the Arbitration Engineer to pass any orders, order against bank etc. We are accordingly of opinion that the appellate orders passed by the Appellate Registrar dated 21-9-1975 in Writ Petition Nos. 364 and 364A of 1976 and those dated 1-10-1975 in Writ Petitions Nos. 364 and 364B of 1976 in so far as they direct recovery of moneys from petitioner Shri Ravi Dasra are to be quashed.

The orders dated 1-10-1975 were passed and are allowed. The appellate orders of the Appellate Registrar dated 21-9-1975 issued in Writ Petition Nos. 364 and Writ Petition No. 364A of 1976 and those of date 1-10-1975 in Writ Petition No. 364B of 1976 and Writ Petition No. 364C of 1976 in so far as they direct recovery of moneys against bank the petitioner Shri Ravi Dasra are quashed. Parties to bear their own costs.

Prayers allowed.

1980 ALL L.J. 742

H. N. SETHI, J. AND  
A. N. VERMA, J.

**Suresh Pal, Petitioner v. The Admission Committee, Aligarh University and another Respondent**

Civil Misc. Writ/Pet. No. 323 of 1984 for 1-12-1984

**Question of facts, Art. 226 — Education — Admission to B. Tech. Course — Rejection of Admission Committee to give 25% weightage to sons and wards of defence personnel — Use of selected candidates published before giving said notification — Admission could not be sought on ground of said notification.**

(Para 54)

L. P. Saxena, for Petitioner; Standing Counsel, for Respondents

**H. N. SETHI, J. (C.J.) —** Argued by the counsel for the respondents as not involving fact is B. Tech. Course of the Aligarh University for the Session 1984-85, petitioner Suresh Pal had approached the Court for relief under Art. 226 of the Constitution.

2. For the year 1984-85 there were 30 seats in the B. Tech. Course run by the Aligarh University. According to the criteria laid down by the Admission Committee, admissions to reserved Course were to be made on the basis of computerized or randomized the marks obtained by various candidates in their B. Sc. examinations. The University sought application for admission to reserved B. Tech. Course by H-3-1985. Petitioner Suresh Pal who had secured 564 marks in his B. Sc. examination also made an application for admission to reserved B. Tech. Course. On 1-3-1985 Major S. S. Raj Choudhary of 4 Infantry Division addressed a letter to the Vice-Chancellor of the Aligarh University forwarding therein the application received by him from Sub-Maj. T. R. Verma, father of the petitioner, regarding weightage being given to the sons of Army personnel in the matter of admission to B. Tech. Course of the University. The Vice-Chancellor forwarded the letter received by him from Maj. Choudhary to Prof. S. R. Saha, Chairman of the Admission Committee on 2-3-1985 after making following endorsement thereon:—

"It appears to me that some weightage for wards of Defence personnel will be in order. That is being done at all Indian Universities. You may like to bring this matter before the Admission Committee."

Prof. S. R. Saha, Chairman of the Admission Committee, appointed Major S. R. S. as Vice-Chancellor. Accordingly on 25-3-1985 he made the following note on the letter of Maj. Choudhary:—

"I suggest that 25% weightage on the standardized marks of the category of candidates for sons. You may if you think it proper approve of this and I may be allowed to report the matter to the Admission Committee in its next meeting."

It appears that before the matter could be placed before the Admission Committee in its next meeting which took place on 26-3-1985, the Admission Committee released a list of 28

candidates referred for admission to the said B Tech Course in 1943-1945. The said list indicated that the candidates securing 601 marks and above in their B.Sc. Examinations had been admitted.

3. The petitioner claimed that a meeting of the Admissions Committee took place on 26-3-1945 and in that meeting the Committee passed a resolution for giving 5% weightage to the marks of every personnel in support of the plea framed considering the petitioner strongly relied upon the following endorsement made by Prof. S. R. Sarda, Chairman of the Admissions Committee on the letter from May Choudhury :-

Weightage approved by the Admissions Committee on 26-3-1945

50% S. R. Sarda  
26-3-1945

Subsequently, the Admissions Committee released a further list of three more candidates admitting them to the said B Tech Course in 1944-1945. These three candidates had secured 671, 615 and 609 marks respectively in their B.Sc. Examinations.

4. The stand taken by the petitioner is that he was, being the son of an army personnel, entitled to 15% weightage in per consideration of the Admissions Committee dated 26-3-1945. Taking into account the said weightage the marks of the petitioner for the purpose of admission to B Tech Course had to be judged on the basis that he had secured 640 marks in the B.Sc. Examinations (581 + 15% weightage accorded). According to the petitioner the University had made admissions to the B Tech Course arbitrarily by leaving out persons securing higher marks in the B.Sc. Examinations and admitting persons who had secured lower marks in their respective B.Sc. Examinations. Inasmuch as the persons securing less than 640 marks in the B.Sc. Examinations had been admitted by the University to the B Tech Course, the petitioner was also entitled to be so admitted.

5. On behalf of the University it is averred that the Admissions Committee passed any resolution giving to the marks of admission to B Tech Course 5% weightage to the marks of army personnel. Despite the endorsement dated 26-3-1945 made by Professor S. R. Sarda (who unfortunately is now dead) on the letter

of May Choudhury to the effect that weightage had been approved by the Admissions Committee on 26-3-1945 the stand taken by the University is that no such resolution was passed by the Admissions Committee on any date which took place on 26-3-1945. In support of this contention the University forwarding with an affidavit filed by one of the said meeting which do not mention anything about any weightage being given to the marks of marks of army personnel in the matter of admission to post graduate courses. The genuineness of the said material has been strongly disputed by the petitioner who also referred us to certain communications which indicated that the University was at the matter of admission treating the sons and marks of army personnel in a special category entitled to some preferential treatment over the general candidates. However, in the view which we are going to take, in this case it is not necessary for us to study the controversy. For our purposes we shall assume that the Admissions Committee had in its meeting on 26-3-1945 decided that in the matter of admission to B Tech Course 5% weightage should be given to the sons and marks of defence personnel. The main question that attracted consideration at this stage is whether in such circumstances the petitioner can derive any advantage from the said resolution as to the marks of marks of his admission to 1944-45 B Tech Course as concerned.

6. It is not disputed before us that in the Admissions Committee approved for the purpose which is to make admissions to various courses run by the University. Further it is for the Admissions Committee itself to lay down the criteria for selecting candidates for admission to various courses in the University. It is not disputed that the criteria laid down by the Admissions Committee for admission to the B Tech Course for the 1944-45 Session was composition ratio of the candidates computed on the basis of marks obtained by them in their respective B.Sc. Examinations. There is no controversy that up to 26-3-1945 there was no resolution of the Admissions Committee giving weightage to the marks of defence personnel. Admission made to various officers being not that the University had fixed 18-3-1945 as the last date for forwarding applications for admission to B Tech Course. On the same day the Admissions Committee



released a list of 26 candidates referred by it for admission to the B Tech Course. In that list the names of the candidates who had scored 603 marks and above in their B Sc Examinations had been included. Inasmuch as the Admission Committee had, by 18.3.1985, when it was making admission for the said B Tech Course, not decided to give any weightage to the marks of defence personnel, there was, strictly no question of giving preference to the personnel in the matter of admission to B Tech Course over any of the twopoint candidates who had been referred for admission to B Tech Course on 18.3.1985. Whereas the personnel had secured only 452 marks in the B Sc Examinations the names of the candidates securing 603 marks and above alone had been included in the list of released candidates.

7. The name of the personnel, however, is that the Admission Committee released the second list on 1.4.1985. Before that date the members of the Admission Committee giving 7% weightage to the marks of defence service personnel had become effective. The three candidates who have been admitted under the list released on 1.4.1985 had scored 452, 523 and 524 marks respectively in their B Sc examinations.

8. Learned counsel appearing for the University has strongly relied a learned submission made on behalf of the petitioner. According to the University the admissions to BSc and B Tech courses were to be made on 18.3.1985. The Admission Committee had accordingly prepared a list of 100 candidates who had secured the highest marks in their B Sc Examinations. The top 100 candidates mentioned in the list released on 1.4.1985 who had secured 603 and 613 marks in their respective B Sc examinations were entitled to be selected for admission to B Tech Course. But due to certain reasons it was not possible for the Admission Committee to declare their admissions on 18.3.1985. This is why the admission of 26 candidates alone was announced and two seats were kept reserved for the above mentioned two candidates who had secured 603 and 613 marks in their respective B Sc Examinations. As the latter require favourable work conditions they could be accommodated for admission to the said B Tech Course. In the case of the third

candidate in the list declared on 1.4.1985 it appears that it was by some mistake in the part of the Admission Committee that his name was not included in the list of candidates who were being admitted to the B Tech Course. When the mistake was discovered by the University, and it found that persons securing lower marks than him had already been admitted to B Tech Course, the University admitted him as a special case and this is how the names of these candidates were included in the list for admission to B Tech Course released on 1.4.1985.

9A. The case supported by the above said explanation offered by the University. Having regard to the material brought on the record by means of various affidavits, we find no basis for concluding that the admissions to B Tech Course for the Session 1984-85 had been made by the Admission Committee on 18.3.1985 on the basis of the criteria then prevailing. The announcement of admission in respect of the candidates whose names appeared in the list dated 1.4.1985 was delayed for the reasons already mentioned. All the thirteen candidates had thus been selected to B Tech Course on the basis of the criteria then prevailing on 18.3.1985. As already stated, on this date there was no question of or the matter of admission, giving any weightage to the marks and marks of defence service personnel. Inasmuch as the petitioner had secured marks lower than all the 31 candidates who had been admitted to B Tech Course he was, in the matter of admission, not entitled to claim any preference over any of them.

9. That a further and more urgent, which has in all cases, a need for recognizing the petitioner's case that while releasing the list of candidates referred for admission on 1.4.1985 the Admission Committee should have taken into consideration the candidates which were passed by it on 18.3.1985 giving 7% weightage to the marks of defence personnel.

10. It cannot be denied that in fact in the 26 candidates whose names had been released for admission on 18.3.1985 had been properly selected on the basis of criteria for admission then prevailing in that date. Only two marks were remained to be filled. It is obvious that the admission order and criteria could not

be made by applying a criteria different from the criteria applied if his making admission in first 28 seats. Application of a different criteria for Mangalchand Singh has not could have led to an appreciable discrimination in the circumstances, after making admission to 28 seats his admission in the remaining 100 seats had necessarily to be governed by the same criteria. Viewed in this light, any criticism passed by the Admission Committee on 26-3-1985 giving 5% weightage to the marks of defence service personnel could not be grounds for interference by the 1984-85 B. Tech Course. If at all, it would apply for admission in future course only.

11. Learned counsel for the prisoner also contended that as a matter of fact the University for purposes of making admissions to the B. Tech Course had acted adversely inasmuch as it had while issuing the list dated 26-3-1985 selected certain candidates who had secured marks lower than the two candidates whose names appear across Para 2 and 43 in the list released by class on 1-4-1985. The circumstances in which the names of the candidates had been chosen from the list released on 26-3-1985 have already been mentioned above, and it cannot be said that the action of the Admission Committee in that regard was arbitrary. The prisoner has not succeeded in showing that after opening the weights which he claims and to which he is, according to him entitled, there is any candidate who has secured marks lower than him at the B.Tech. Examination who has been admitted to B. Tech Course.

12. In the result the prisoner has failed to convince us that he was entitled to be admitted to the B. Tech Course for 1984-85 Session as preferable to any of the candidates who had been so admitted by the University.

13. The petition, therefore, fails and is dismissed. In the circumstances, we direct the parties to bear their own costs.

*Pravesh Chandra*

[1986 All. L. J. 752]

*S. K. DASGUPTA AND S. K. MOHANTY vs.*

*B. P. Singh, Prisoner; District Magistrate, Kanpur and others, Respondents*

Civil Misc. Writ Pet. No. 10852 of 1984  
[1985 All. L. J. 100]

(A) *B.P. Classes (Regulation) Act (2 of 1968), S. 5(3) — A partner not included in joint licence issued to some other partners of firm — He cannot be said to be approved partner within meaning of S. 5(3) — He cannot invoke appellate power of State Government to cancel said licence*

Where only some of the partners of a firm obtained a joint licence, the partner not included in licence could not be said to have been approved by the officers of licensing authority, entitling to grant a licence to him, within the meaning of S. 5(3). Therefore, he could not invoke the appellate powers as conferred in S. 5(3) while making a representation to State Government to cancel the licence of said partners on the ground that his signature had been forged upon the application made for grant of licence.

(Para-18)

(B) *B.P. Classes (Regulation) Act (2 of 1968), S. 7 — Substitution of State Government — Nature of — Proceedings for cancellation of licence before licensing authority as well as State Government — Licensing authority should cease to exercise jurisdiction under S. 7 the moment State Government initiates proceedings*

A partnership was raised in favour of some other partners of a firm. Partner not included in joint licence made a representation to licensing authority for cancellation of licence. He also made the same representation to State Government, which initiated proceedings.

Field, in which the firm is State Government initiate action under S. 7 (cancelling proceedings initiated by licensing authority, under this provision with his cancelled licence why it could not be said that once licensing authority initiated proceedings under S. 7 the State Government would become powerless. On

the contrary, the Licensing Authority should bequest license on state to exercise jurisdiction under S. 7 the request the State Government limited proceedings under that provision. (Para 12)

Under S. 7(1) the State Government and the Licensing Authority both are empowered to take action in a case where a license has been granted by the Licensing Authority. Under S. 7(2) Licensing Authority is clothed with the power to grant a license keeping in view not only the provisions of the Act but also the control of State Government. Under S. 7(4) order passed by Licensing Authority at a time of execution or revocation of a license is appealable to the appellate jurisdiction of the State Government. Hence, it can be said that once State Government initiates proceedings under S. 7 proceedings before Licensing Authority will remain unprogressed. (Para 13)

**S. P. Singh for Petitioner Standing Counsel for Respondent**

**S. R. DEBAM, J. —** In the present writ which has been preferred by the other partners of a Firm Hari Pal Singh Kanpur the principal relief claimed is the issue of a writ in the nature of prohibition restraining the State Government from proceeding further with the steps initiated by a notice under S. 7 of the U. P. Co-Operative Societies Act, 1963 (hereinafter referred to as the Act) for the cancellation of a co-operative license granted to the said Firm.

2. It appears that Sri K. P. Singh the respondent No. 2 was one of the partners of the said Firm. It also appears that already a joint license was issued in favour of firm out of eight partners of the said Firm. Sri K. P. Singh was one of the said partners. Later on five persons obtained a joint license and as the license Sri K. P. Singh was not included he brought a representation to the District Magistrate (the Licensing Authority) for the cancellation of his license on the ground that his signature on the application had been forged and he (the District Magistrate) had been defrauded in issuing a license in favor of the partners.

3. On 2nd April 1964 the Additional District Magistrate (Civil) put a report to the District Magistrate that the petitioner made

by Sri K. P. Singh of the statement in said application for the cancellation of his license was the subject matter of a writ and that the matter was not proper and, therefore, a writ not proper to proceed further in the matter. He also stated that the proceeding should be stopped that the decision of the Civil Court. On the basis of the note the District Magistrate made the following endorsement:

I agree

4. Sri K. P. Singh made a representation to the State Government asking that since the relevant facts and proceedings did not show his signature had been forged upon the application made for the grant of a license. It appears that the State Government directed the District Magistrate to obtain the names of the petitioner and others in the form of an affidavit or affidavit. Accordingly, on 9th August, 1964 the District Superintendent Tax Officer Kanpur sent a communication to the petitioner and others requesting them to appear on 27th August, 1964 as government witnesses. At the same time the process was preferred in the Court.

5. In support of the process it is urged that the proceeding initiated by the State Government is without jurisdiction. In the furthering the submission made it that Sri K. P. Singh having made revoked the jurisdiction of the District Magistrate or the Licensing Authority for the cancellation of the license the death of the State Government, so far as he was concerned, closed automatically. This argument is founded on reading of section 7 which states that the power of the State Government and the Licensing Authority in the matter of cancellation of license are concurrent. For approaching this submission it may be necessary to read a few provisions of the Act.

6. Sub-section (1) of Section 5 lays down the conditions under which a license is to be granted.

7. Sub-section (2) provides that subject to the provisions of Section 5 and to the control of the State Government and the interests of the general public, the Licensing Authority may grant license under the Act on such terms and conditions and subject to restrictions as it may deem fit and on payment of such fees as may be provided.

8. Self-section (3) will be initiated as an argument has been built upon the facts.

Any person aggrieved by the decision of a licensing authority may appeal to the State Government and the State Government may, under such order as it may make in this behalf.

9. We may at this stage straightaway deal with paragraph 1 of the submission. Sir K. P. Singh is right when he says that sub-section (3) of (3) is not a submission. Sir K. P. Singh says, (the law) is not aggrieved by the decision of the Licensing Authority refusing to grant a licence to him and therefore, he could not exercise the appellate power as provided in sub-section (3) of section 7. He is not a representative of the State Government in this case. He is not the petitioner and object.

10. Sub-section (1) of Section 7 may also be initiated. It reads:

Whenever anything is done in the Act which a licence has been granted under Section 7, it may be cancelled or revoked at the public interest —

(a) by the State Government, where the licence was granted by the Government or by the Licensing Authority;

(b) by the licensing authority, where the licence was granted by such authority.

11. Sub-section (1) (a) of Section 7 lays down the conditions under which a licence may be cancelled or revoked. One of them being that the licence was obtained through fraud or misrepresentation.

12. Sub-section (2) provides that where the State Government or the licensing authority is of the opinion that a licence granted under Section 7 should be cancelled or revoked, it shall, as soon as may be, communicate to the licensee the grounds on which the licence is proposed to be taken and shall afford him a reasonable opportunity of making a representation against it.

Sub-section (4) may be extended.

"Where the order suspending licence under the proviso to sub-section (1) or cancelling or revoking it under sub-section (2) has been passed by a licensing authority, any person aggrieved by the order may within thirty days

of the communication of such order to him appeal to the State Government which may pass such order as it may think fit.

One of the well known principles of the constitution is that a conflict of the jurisdiction conflict of the jurisdiction should be avoided. Keeping this principle in view, it is now necessary to consider the matter made by Sir K. P. Singh that under section 7 of the State Government is allowed to proceed further in the contemplated proceeding, under section 7, there is a question here whether the power adopted by the Licensing Authority and by a State Government. We have already seen in sub-section (1) of Section 7 that the State Government and the Licensing Authority are empowered to take action in a case where a licence has been granted by the Licensing Authority. It is to be noted that in the matter where the licence was granted by the District Magistrate acting as the Licensing Authority. Having considered the matter carefully, we are of the opinion that it will be open to the State Government to take action under Section 7 as long as the proceedings started by the Licensing Authority are not concluded under law. Once the State Government sets the ball rolling by initiating proceedings under section 7, the proceedings before the Licensing Authority will continue to run and it is to be understood that in sub-section (2) of Section 3, the Licensing Authority is charged with the power to grant a licence keeping in view not only the provisions of the Act but also the consent of the State Government. It follows that the independence and discretion of the State Government over the Licensing Authority are complete. In any case the State Government is armed with the power of regulating the manner of the Licensing Authority in the manner of grant of a licence. In sub-section (4) of Section 7 we find that an order passed by the Licensing Authority in a case of cancellation or revocation of a licence is maintainable in the appellate jurisdiction of the State Government. Therefore, a natural conclusion is that when the Licensing Authority initiates proceedings under Section 7, the State Government becomes powerless. On the contrary, as already emphasized by us, the Licensing Authority should initiate, execute, or make or maintain the proceedings under Section 7. The manner in which the State Government initiates proceedings under that provision

15. That matter can be looked at from another angle. Section 4 provides that the District Magistrate shall act as the Licensing Authority. However, provision is made for the State Government to nominate for the whole or any part of the time such other authority as it may specify in the notification to be the Licensing Authority for the purposes of the Act. On 30 May, 1977, a notification was issued for the State Government whereby the Government of Tamil Nadu was empowered to nominate the District Magistrate as Magistrate, was empowered to transfer the powers of the Licensing Authority under section 4. We have already extracted, above, the order passed by the District Magistrate (Licensing Authority). In our opinion, the licensing authority in the instant case did not pass any order at all. He did not apply his mind to the controversy before him. He acted mechanically as per saying I agree. Therefore, for the purpose of this petition, there can be no difficulty in taking a view that really proceedings under section 7 were not initiated at all by the Licensing Authority.

16. The petition has not been formally admitted. However, affidavits have been exchanged between the parties. We have heard learned counsel for both the sides. We are therefore proceeding to dispose of this petition finally.

17. The petition fails and it is dismissed summarily. The costs order passed by the Court on 17th August, 1984 is hereby revised.

Petition dismissed.

1986 ALL I L J 335

S K DASH (J)

How Late Should Petitioner's 1st Adult Daughter Judge Bonds and Another Respondents

Civil Misc Writ Petn. No. 4126 of 1982 (S. 1) 1986.

U.P. Urban Buildings Regulation of Letting, Rent and Eviction Act (2) of 1973, No. 28 (2a) Explanation (1) (3). Fourth Proviso and (2) Explanation (1) inserted by Amending Act 28

of 1974. — Release of accommodation. — Tenant's widowed daughter residing with her husband's residential building in same city. — Tenant could not object to landlord's application for release.

The landlord filed an application under § 24(1a) for release of the residential accommodation. At the relevant time apart from the tenant, her widowed daughter and her son had been residing in the accommodation in dispute. During the pendency of the proceedings the widowed daughter of the tenant took a residential building in the same city wherein the accommodation in dispute was situated. It was the case of landlord that in view of Explanation to § 24(1) it was not open to the tenant to raise any objection to the application for release of the accommodation made by the landlord. The tenant contended that the provisions of the Explanation really meant that the tenant of the Explanation will apply only if a member of the family of a tenant continued to reside with the tenant despite her building or acquiring a house within same city. Any other construction according to the tenant, would lead to grave hardship to the tenant.

Held, the application of the landlord for release was maintainable. The provisions of the Explanation envisage two different categories of a member of the family of a tenant. The one is he or she who has been normally residing with the tenant and the second is he or she who is wholly dependent on the tenant. The legislative mandate that a tenant having his own accommodation in a city city should not be empowered to resist an occupation of another accommodation in a house in the same city etc. can neither be diluted on affidavit or oath or unimpeachable and that appears to be the legislative intent in sub-section (1) of § 12 and Explanation (1) to sub-section (1) of § 21. The position is clear that all of the Explanation to sub-section (1) of § 21 had full play even before the insertion of the fourth proviso to sub-section (1) of § 21. In other words that upon the fulfilment of the conditions laid down in the said clause the objection of the tenant against the application made by the landlord under § 24(1a) could not be availed. The legislative intent appears clearly

by providing expressly that the terms of the licence proviso will not apply to a licensee provided by the licensee. The material is that it is to the Appellate Authority the consideration of the objection of the tenant to an application for release made by the landlord after S. 21(1a) is triggered.

(Para 13-14-16)

**Cases Referred Chronological From 1960 Ad Room Cases (1960) 1 ALL 1001**

13

**R. R. K. Thakur, for Plaintiff W. H. Khan S.C. for Respondent**

**ORDER** — The petition for enforcement of contract is directed against an order passed by the Appellate Authority constituted under the U.P. Urban Buildings (Regulation of Letting, Easement and Eviction) Act 1972 (hereinafter referred to as the Act) allowing the appeal of the landlord and reversing the order of the Prescribed Authority. By the impugned order dated 23rd March 1987 the appeal was permitted to have been made by the landlord under S. 21(1a) of the Act for the release of a residential accommodation has been allowed. Initially the tenant was a mortgagee in possession of the accommodation in dispute. The landlord referred the same. However, the mortgagee was permitted occupy the accommodation as a tenant.

3. The Prescribed Authority reported a finding that consent of the landlord was obtained from the mortgagee. It also recorded a finding that the tenant will suffer greater hardship than the landlord in the event the application of the landlord for the release of the accommodation is disputed is accepted. The Appellate Authority disagreed with the view of the Prescribed Authority on both the counts.

3. It is not in dispute that at the relevant time apart from the tenant, the widowed daughter and her husband were residing in the accommodation in dispute. In the course of the trial the Court by notice behalf of the landlord it has been proved that after the impugned order of the Appellate Authority the said daughter of the tenant built a residential building at the same place where the accommodation in dispute situated. The tenant has not been denied the right to

efficient filed in order behalf of the present tenant. We have therefore to proceed on the assumption that the treatment made in the impugned order is correct.

4. The new technology in the impugned order namely the building of a house by the widowed daughter of the tenant can be and should be taken into account in proceedings under Art 21a of the Constitution. The Appellate Authority (11 of S. 21 of the Act) which a tenant for the present person provides that in the case of a residential building where the tenant is any member of his family who has been normally residing with him or a wholly dependent on him has built or has obtained acquired in a vacant state or has got vacated after acquisition a residential building in the time very reasonably, needed after of time ago so deposits of a tenant against an application under the section shall be maintained. In view of that provision it is not open to the tenant to read any objection to the application for the release of an accommodation made by the landlord.

5. Learned counsel for the tenant contends that the provision as contained in the Appellate Authority's order really means that the terms of the Appellate Authority will apply only to a member of the family of a tenant who is to reside with the tenant. Since the building a house or acquiring a house etc. in the name of her, will lead to a great hardship on the tenant. The contention is not sustainable either on principle or authority.

6. The relevant provisions of the Act are these. S. 21 provides that a landlord or a tenant of a building shall be deemed to have consent to occupy a building or part thereof if he has allowed it to be occupied by any person who is not a member of his family. Family is defined in S. 21a to mean an original or a landlord or tenant of a building, his or her spouse, male/female dependents, such persons, grand parents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male legal descendant as may have been residing with him or her and includes an reference to a landlord, any female having a legal right of residence in the building. Section 21 of S. 21 provides that in the case of a residential building if the tenant or any

member of his family builds or otherwise acquires a new or vacant unit or gets vacant a residential building in the same city municipality, notified area or town area in which the building under tenancy is situated he shall be deemed to have ceased to occupy the building under tenancy. The Explanation to sub-section (3) provides that the expression "any member of family" in relation to a tenant, shall not include a person who has neither been actually residing with nor is wholly dependent on such tenant. The Explanation was inserted by the U.P. Act No. 28 of 1976.

7. Sub-section (4) of § 28 makes a provision for relieving the tenant against his liability for payment on the ground mentioned in cl. (a) of sub-section (2) of § 28 if the tenant makes the requisite deposit in accordance with the condition laid down in sub-section (4). However, in the proviso to sub-section (4) the condition, prior to the striking clause has been taken away inasmuch as when a tenant or any member of his family has built or has otherwise acquired a vacant unit or has got vacant after acquisition a residential building in the same city municipality notified area or town area.

8. Section 2a (1) is relevant to the present controversy, inasmuch as the Prescribed Authority may, on an application of the landlord in that behalf, order the removal of a tenant from the building under tenancy or any specified part thereof if it is satisfied that the building is being, has acquired either in its existing form or after demolition and new construction by the landlord for occupation by his ordinary members of his family or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the owner of a public charitable trust for the objects of the trust.

9. The fourth proviso in sub-section (1) of § 28 was inserted by the U.P. Act No. 28 of 1976 with retrospective operation. It reads —

Provided also that the Prescribed Authority shall, except in cases provided for in the Explanation, take into account the title held by the tenant from the grant of the application in regard to the title held by the landlord from the refusal of the application

and that the words shall have regard to such factors as may be prescribed.

10. Clauses (i) of the Explanation to § 28 (1) reads —

In the case of a residential building in which the tenant or any member of his family who has been previously residing with or is wholly dependent on him, has built or has otherwise acquired a vacant unit or has got vacant after acquisition a residential building in the same city municipality notified area or town area, no objection by the tenant against an application under the sub-section shall be maintained/underlined by, and

The above-said Explanation omits the portion underlined in the statute book, from the very inception. In other words the word was in existence before the insertion of the fourth proviso introduced by the U.P. Act No. 28 of 1976. The words underlined by me in the Explanation were inserted by U.P. Act No. 28 of 1976.

11. It will be immediately seen that the words "has been previously residing with him or is wholly dependent on him," were originally used by the Legislature in U.P. Act No. 28 of 1976. These words are free from any ambiguity and have a clear meaning. It is well known that primarily the business of the Legislature has to be governed by the words used by it. A court of law may add or subtract words in exceptional cases where it finds that the Legislature has not been able to efface its intention by the words used by it. In other words, it is permissible to a court to legislate in the path of interpretation only in a situation where the words used by the Legislature do not carry a clear meaning. No such emergency exists with regard to the words used by the Legislature in the instant case.

12. The element of hardship has no place where the words used by the Legislature are free from ambiguity. We have already seen that the reference made by the Legislature are not susceptible of creating any doubt or confusion. On the contrary, by introducing the words underlined by me in the Explanation by U.P. Act No. 28 of 1976 the Legislature has taken a definite step to mitigate the rigour of the provision as contained originally in the Explanation. But the three words inserted by the U.P. Act No. 28 of 1976 the consequences accomplished by the provision is confused.

in the Explanation "would have meant several other family members of the family of a tenant had it happened in a tenant's flat etc. it would be a building on the same site. We have already seen the definition of the family under S. 2(4). For example, if there are the spouse of a tenant or male blood descendants of a tenant etc. though living far away from the tenant and not having a personal relationship with the tenant, come, visit a house or acquired the same in the same state etc. in the same city the tenant would have become defendants in an action taken by the landlord under S. 2(1)(a) for the release of an accommodation. Realising the gravity of the hardship in the statute the Legislature introduced the proviso with a retrospective effect that the tenant will be obliged to give a notice to the landlord in proceedings under S. 2(1)(a) only in a situation where any member of the family of the tenant who has been normally residing with him or is wholly dependent on him (which is a tenant or his spouse the tenant or a tenant's child etc.

13 The submission of the learned counsel for the tenant that for exercising the power of the Explanation a member of the family of the tenant should continue to reside with the tenant is not tenable. It is not the submission of the learned counsel that can be that the word "or" in the position indicated by me should be read as "and". We have already seen that a similar provision has been made by the Legislature in the Explanation to subsec. (1) of S. 12. We have also seen that the relevant provision in the Explanation to subsec. (2) of S. 12 under the Explanation to subsec. (1) of S. 13 was inserted by the Amending Act No. 24 of 1974. In the Explanation to subsec. (2) of S. 12 the Explanation has no words for any questions, where a word like "clear words" should have normally reading with "or" is wholly dependent on such tenant. If the tenant or his spouse should reside with him or a child or a grandchild, it is a typical case that the provisions of the Explanation envisage two different categories of a member of the family of a tenant. The first where the tenant has been normally residing with the tenant and the second is he or she who is wholly dependent on the tenant.

14 The preamble to the Act states that the Legislature has introduced the statute with the general public for regulation of tenancy and rent of and the creation of secure tenancy

tenancy class of buildings situated in urban areas and for matters connected therewith. Therefore, the policy and the object of the Act is to deal with the improvement of the housing of the tenants and such regulation can be enacted by several measures. Reliance of the spouse of the landlord on the one hand and the tenant on the other is a reasonable measure appears to be an ideal approach for addressing the provisions of the Act. The priority of accommodation can only be met by those contracting society as a large scale and the society has to keep pace with the increasing population. Social legislation alone cannot be the answer. If, means of legislation only some regulations can be enforced. Therefore, the Legislature maintain that a tenant having his own accommodation in a city should not be permitted to remain in occupation of another accommodation as a tenant at the same city etc. and neither be disturbed as arbitrary or harsh or unreasonable and this appears to be the legislative intent in subsec. (1) of S. 12 and Explanation (a) to subsec. (1) of S. 13.

15 In *Mang Lal v. Additional District Judge 190 AB East Cas 21 (F2)* the provisions of clause (a) of the Explanation to subsec. (1) of S. 12 came for consideration before the Hon'ble Judges of the Court. The Court said that on rare cases domestic of the Explanation a tenant is prohibited to occupy any other house to the release application made by a landlord under S. 2(1)(a). We say it limited to the question whether the conditions set out down for the application of the contents of the Explanation are or are not.

16 Learned counsel for the plaintiff, who rights submitted that despite the inclusion of the conditions set out down in (1) to the Explanation the condition precedent in the application of an application made by the landlord under S. 2(1)(a) is a substantiation of the Plaintiff's testimony that the building is bona fide required by the landlord for occupation by himself or any member of his family. He however, contends that the tenant, despite the explanation, has not been deprived of his right to exercise his application on matters as far as the case goes by the landlord that the building is bona fide required by him or himself. He points out that the facts proven in S. 2(1)(a) and the Explanation should



be read together. In other words, is the Legislature the legislature intent is that the objection of the tenant that he would suffer greater hardship than the landlord if an order of release is granted should be excluded from consideration. The intention was to confer to the decision of the Full Bench of the Court in *Ming Lai's case* regard the issue. I have already explained that the Legislature was in the initial stage from the very beginning that it when the L.P. Act No. 13 of 1972 was introduced with effect from 1st July 1973. The fourth part was reserved correspondingly by the L.P. Act No. 25 of 1973. Before the coming of the Police Landlord and the Act applied that while considering an application under S 21(1)(a) the relevant provision should compare the comparative hardship of the landlord and the tenant. The rule was struck down by a Full Bench of the Court on the ground that it was contrary to the express provisions in S 21(1). Therefore the fourth part was struck by the Legislature. Thus the position is clear that Cl (d) in the Legislature had full play even before the coming of the fourth part. Its effect was that upon the failure of the landlord laid down in the real third the objection of the tenant against the application made by the landlord under S 21(1)(a) could not be examined. The Legislature laying the policy by providing expressly that the terms of the fourth part will not apply to a tenancy governed by the Legislature. The net result is that Cl (c) in the Legislature prohibits the consideration of hardship of the tenant to an application for release made by the landlord under S 21(1)(a) altogether.

17 The Appellate Authority has recorded a clear finding that the need of the landlord for the accommodation is to be kept in his own private. This finding is based on the representation of the majority of the members by the landlord. There is no difficulty in the finding that to transfer the premises to the need of the landlord of the Court under Art. 23 of the Constitution.

18 In the result the process fails and is dismissed. However, there shall be no order as to costs.

Process dismissed

1986-1987, L. J. 759

R. L. YADAV, J.

*Ngai Ahnann and others, Petitioners v. The D.D.C. Yauwau and others, Respondents.*

Civil Appeal No. 1986 of 1974 D.  
17/12/1986

**L.P. Transferee Ahnann and Land Release Act (I of 1954), S. 10(a) inserted by Act 21 of 1949 — T.P. Act (1942), S. 41 — Tenant holder receiving rule dated on date on which he was not a transferee — Yauwau, however, deposing on those rental under S. 14(a) on same date — Rule dated except on that date in favour of vendor is valid — Vendor is exempted from denying transferee right in favour of vendor as per S. 41.**

Where a tenant-holder after commencement of Amendment Act of 1949 had executed a rule dated on the date on which he was not a transferee but had deposited on same rental on the date he was started to be declared as a transferee from the date of deposit made in view of S. 10(a) and rule dated inserted in favour of vendor on that date was valid and legal even though tenant transferee was exempted and ruled on a later date. Again from S. 17(a) of the Act the transferee can be declared Cl of the T.P. Act which creates a rule of forcing the grant by exempted. In other words when a person transfers property to which he had no transferee rule on the date of transfer, but he makes representation that he has transferee interest therein, and acting as the representative, the transferee must a transfer for consideration and in the meanwhile if the transferee acquires transferee rights the transferee and his interest would be managed by the English Common Law doctrine of estoppel by deed from denying that he has no transferee rights. There is an equitable doctrine applicable to such situation equity insists that no date which ought to be done. Thus vendor is made in favour of vendor before grant of transferee must would be legal and vendor could be exempted from denying transferee right in favour of vendor. Further discussed — (Para 7 & 8).

Cases Related — *Channathal Pann*, 1960 All LJ 278, AIR 1960 SC 694. 18

CIR/00/04/04/1986/1987

1974 Rev. Dec. 34 ..... 6-13  
 AIR 1975 SC 2461 ..... 5-16  
 AIR 1975 AIR 267 1975 AIR 21 448 ..... 6-13  
 AIR 1975 AIR 526 1971 AIR 21 507 (P) 5-16  
 1975 Rev. Dec. 34 ..... 6-13  
 1956 Rev. Dec. 35 ..... 4  
 AIR 1965 AIR 264 ..... 6-13  
 (1969-70) LJ QB 75 (1969) 3 AC 133 40-67  
 182 (HL) Taylor v. Official Receiver 12  
 (1960-61) 10 HLC 592 32 LJ Ch 493 11-22  
 166 (HL) Moberg v. Moberg 30 31 32  
 (1971) 1 WLR 437 35 ER 684 Regard v.  
 Hooper ..... 12

R. H. Zaidi, for Petitioner, Sarvada Math  
 Singh and Singing Council, for  
 Respondents

**ORDER.** — The petition under Art. 22  
 of the Constitution is dismissed against the order  
 dated 30-4-74 (Annexure B) passed by the  
 Assistant District of Consolidation  
 Officer.

3 The facts leading to this petition are  
 stated in Muhammad Fakir's respondent No. 4  
 was the tenant holder of Chak No. 753 (Q-26-  
 5-66) but it is alleged to have remained an  
 unregistered agreement of sale in favour of  
 the petitioners. In the meanwhile a power of  
 attorney was executed by the respondent No. 4  
 in favour of Mrs. Bandi and she was given  
 power to execute the sale deed in respect of  
 the land in dispute. Two letters issued was  
 deposited in view of S. 134 of the T. P.  
 Transfer of Property and Land Revenue Act,  
 (hereinafter referred to as the Act) for  
 requiring Muhammad Fakir on 28-10-46 and  
 on the same date a registered sale deed was  
 obtained in favour of Bandi's respondent  
 No. 3. Later on Muhammad Fakir  
 respondent No. 4 executed a registered sale  
 deed in favour of the petitioners on 4-4-47 (just  
 after the sale deed in favour of respondent  
 No. 3).

3 Both the writs, the petitioners and  
 also respondent No. 3 applied for execution  
 of the sale deed during the consolidation  
 operation. It was alleged by the petitioners  
 that so they had an agreement for sale in their  
 favour, hence no sale deed could have been  
 executed in favour of respondent No. 3. This  
 case of respondent No. 3 was that the power  
 of attorney was executed by respondent No. 4  
 in favour of respondent No. 3 on 4-4-46 and

the same was cancelled by him, hence the  
 sale deed in favour of the petitioners could  
 not have been executed. By him (Muhammad  
 Fakir) it was further alleged that after  
 depositing the same control the Sanad  
 Khambhat was prepared and went in the  
 name of the tenant holder on 1-11-46, hence  
 the would date back to the date of deposit  
 and the same that the sale deed was executed  
 on 28-10-46 in favour of respondent No. 3 was  
 legal and therefore no right was left in the  
 vendor to execute another sale deed in favour  
 of the petitioners. It was further alleged, that  
 the date of the petitioners was also barred.

4 The Consolidation Officer decided the  
 case in favour of respondent No. 3 holding that  
 the sale deed dated 28-10-46 was legal and the  
 name of vendor Muhammad Fakir shall be  
 expunged and that of Bandi's respondent No. 3  
 shall be entered. The petitioners preferred an  
 appeal and the same was allowed by an order  
 dt. 17-11-72. Against that order the revision by  
 respondent No. 3 was allowed by the impugned  
 order dated 30-4-74.

5 On R. H. Zaidi appearing for the  
 petitioners urged that the sale deed in favour  
 of respondent No. 3 dated 28-10-46 was legal  
 and valid as far as the date the Sanad Khambhat  
 was not obtained and the same was obtained  
 on 12-11-46. Hence on the date of sale the  
 vendor was not the Khambhat and had no right  
 to execute the sale deed. The agreement for  
 sale dated 28-10-46 was in favour of the  
 petitioners. Hence respondent No. 3 could not  
 have obtained the sale deed from Mrs. Bandi,  
 the party holding the power of attorney from  
 Muhammad Fakir respondent No. 4. It is in  
 breach of S. 40 of the Transfer of Property  
 Act could be given to respondent No. 3 under  
 the facts and circumstances of the case. He  
 relied upon Bandi's v. Sing. Khambhat,  
 1971 AIR 21 507 (1971 AIR 21 507) and  
 Goshal Math (Bakery) v. H. S. Singh AIR 1975  
 SC 2461.

6 On Sarvada Math Singh appearing for  
 respondent No. 3 urged that as the sale deed  
 was executed in favour of respondent No. 3  
 on 28-10-46 and the same control was also  
 deposited in view of S. 134 of the Act and the  
 rules made thereunder and the Sanad  
 Khambhat was obtained on 12-11-46, that would  
 have retrospective effect and vendor  
 Muhammad Fakir on the vendor on the date

of sale and the sale deed in favour of respondent No. 3 was valid and legal in any case, with the help of S. 43 of the T.P. Act must though the vendor might not have immediate right upon the date of sale. But that would count for the benefit of the vendor after the immediate right was granted. He further argued that the claim of the petitioner was maintained notwithstanding the agreement for sale was to be enforced by the petitioner within a period of three years as provided under Art. 54 of the Limitation Act, 1963 and under any act for the specific performance of the contract was held by the petitioner not a bar for enforcement of the sale deed in favour of respondent No. 3 was held to be a period of three years in view of Art. 54 of the Limitation Act, 1963. Hence neither the sale deed is barred of respondent No. 3 can be held to be illegal nor the agreement for sale in favour of the petitioner can now be enforced. He distinguished the case based on behalf of the petitioner and placed reliance on legal cases - *Lalbahar Singh v. Lalbahar Singh* (1975) 42 LJ 146 (All India High Court), *Shri Ram Singh v. The Commissioner Varanasi District* (1974) 49 P.W. 94, *Ram Singh v. Deputy Director of Consolidation* (1971) 39 DLR 141 and *Khan v. Nazim Singh* (1966) 39 DLR 28. He further argued that as Muhammad Fakher who executed the agreement for sale in favour of the petitioner did not deposit the entire rental rather the same was deposited by his son, Basul who was holding the power of attorney, the executible sale deed in favour of respondent No. 3 whereas the sale deed of the petitioner was got executed by Muhammad Fakher without cancelling the power of attorney. Hence the sale deed in favour of the petitioner was obviously illegal.

7. I have heard the learned counsel for the parties. The first point that falls for consideration is whether the sale deed dated 26.10.68 is in favour of respondent No. 3 was illegal inasmuch as on that date the vendor was not the immediate author of the rental was deposited and Samul Muhammad was named on 12.11.68. After 1964 there was an amendment in the Act (U.P. Act No. 26 of 1965) particularly in S. 43 and other sections. In section 43 it was clearly provided that "a vendor pays or offers to pay in the event of the State Government not issue of the land

revenue payable within due of application for sale upon an application duly made in that behalf to an Assistant Collector. He needed not affect them the date on which the amount has been deposited. In a declaration that he has deposited the same Muhammad maintained in section 43 in respect of such land. In the instant case as the amount was deposited on 26.10.68 before the enforcement of U.P. Amendment Act No. 26 of 1965, hence the document could be treated as declaration of immediate right on the date of the deposit itself.

8. I am of the opinion that even though the Samul Muhammad accepted and acted on 12th November 1968 but that shall have effect from the date of deposit and it would be deemed as if the person who had deposited the rent was Muhammad himself on the stated deposit and also that date he required attached to favour of respondent No. 3 that was perfectly legal.

9. Apart from S. 134 of the Act, the agreement can be held under S. 43 of the Transfer of Property Act, which means each of finding (to grant by contract) in other words when a person transfers property to which he has no transferable title on the date of transfer but he makes representation that he has transferable interest therein and acting on that representation the transferee takes a transfer for consideration and in the absence of the transferee acquires transferable rights. In transferee and his power would be stopped by the English Common Law doctrine of accepted by deed from denying that he has no transferable rights. There is an equitable doctrine applicable to such situation. Equity treats that as done which ought to be done.

10. It would not be open to question that title stands in *Hidayat v. Marshall* (1964) 42 All India High Court basing on S. 43 of the Transfer of Property Act.

11. In *Hidayat v. Marshall* (Supra) Lord Wilberforce has observed as follows:

"If a vendor agrees to sell property and is possessed of which he is not possessed at the time, and he reserves the immediate power of the contract and afterwards becomes possessed of property concerning the description in the contract, there is no discharge of equity."



has no objection and the matter accordingly, joined. Thereafter however, the order appoints B a temporary designated officer of the order dated 1985 to the amount deposited shall be paid to respondent No. 3.

Prayer Granted

1986 AIR, L. 1 763

2-K (1984) 7-1

*Agha Sayid Ali Shah Petitioner v. The Rent Control and Eviction Officer, Aligarh and others Respondents*

Civil Appeal Nos. 1074 of 1982  
23.11.1985

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (15 of 1975), S. 17 —  
U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules (1975), R. 48 —

Application for allotment of accommodation by petitioner = Application bearing clear and explicit endorsement of landlord willing to let/tenure clear and unopposed that accommodation in dispute should be allotted to petitioner — Application cannot be rejected on grounds that nomination made by landlord was not in proper form = There is no prescribed form or procedure for nominating a tenant by landlord. (Para 4)

V. K. Gupta and A. K. Gupta, for Petitioner  
I. K. Khan, Pradeep Krishna and Sandeep Council, for Respondents

**ORDER.** — The person with reference of an application for the allotment of an accommodation is directed again in order dated 16th October 1982 passed by the Joint Additional District Judge, Aligarh with by the same order directed that individual applications. These applications have been made by three different persons including the petitioner whose application for the allotment of the said accommodation had been rejected.

1. The petitioner on 16th March 1982 made an application to the Rent Control and Eviction Officer, Aligarh (hereinafter referred as the Eviction Officer) for the allotment of the said accommodation to him. The application bears

the following order issued by the Landlord to the Agha Abdul Khan the respondent No. 3.

Strongly recommended for immediate consideration and allotment.

It appears that Kulkarni Parvat the respondent No. 3 also made an application for the allotment of the said accommodation at some point of time prior to the date of the application of the petitioner. The Landlord on 12th March 1982 gave a formal intimation of the vacancy of the accommodation to the Eviction Officer. On 7th April 1982, he made an application to the Eviction Officer containing the following prayer —

It is, therefore, prayed that the court be pleased to order an allotment of the accommodation in question to favour of the applicant. See Agha Sayid Ali Shah, landlord, who has been declared tenant/possessor of the said accommodation on vacancy basis.

3. The accommodation was allotted on 6th April 1982 to one Jamil Ahmad who is applicant, refused to occupy the premises some rooms in the order. Thereafter on 22nd July 1982 the said accommodation was allotted in the respondent No. 3. The petitioner and two other applicants who appeared, went up to separate requests and their requests have been disposed of by the impugned order. The learned Additional District Judge, Aligarh as a personal category, has not given the benefit to the petitioner of the nomination made by the Landlord in his favour on the ground that the same had not been made in proper manner. Before going into the question a chain of events may be disposed of. In the impugned order the personal notice of the petitioner on the assumption that Section 17 of the U.P. Act No. 15 of 1975 was applicable. Learned counsel for the petitioner has drawn my attention to the provisions made in the new provision as also to the application made by the Landlord nominating the petitioner as the prospective tenant and on the basis of that material he has contended that really the question seems to be whether the basis of the provision is measured in such manner (1) of S. 17 and not application (2). In the application made by the Landlord to the Eviction Officer nominating the petitioner there is not even a whisper that he is in occupation of a portion of the accommodation.

in dispute. We have therefore in principle no the assumption that really permission (4) of § 5 (1) does not require any account.

4. Neither in § 17 of the Act nor in § 10 of the Rules framed under the Act there may particularities or procedure for requesting a permit by a landlord. It is well known that past and substance of the matter should be looked into and not the form. Here, the government made by the landlord upon the application made by the petitioner on 1st March 1962 was clear and explicit. This was followed up by the application, the prayer to which has already been extracted above. I am satisfied that the landlord made his intention effectively clear and unambiguous that the accommodation in dispute should be allowed to the petitioner. The relevant authority has misapplied and misinterpreted the provisions of §§ 17 and 18 in taking the view that the accommodation made by the landlord is not in the proper form. The order therefore is not sustainable on this ground.

5. The question is: "what should be the proper order passed by the Court?" It appears from the application made by the landlord to the District Officer requesting the petitioner that since 1946 the petitioner is in possession of the accommodation in dispute. We are now in the year 1965. No useful purpose will be served by sending the matter back to the concerned authorities for fresh decision. Now the stage has arrived when these proceedings should attain some finality.

6. The parties concede and it is shown. The order dated 22nd July 1962 passed by the District Officer and as confirmed by the impugned order dated 14th December 1962 passed by the first Additional District Judge, Aligarh, are quashed. The respondents are directed to treat the petitioner as an occupier of the accommodation in dispute. The parties are directed to treat their case as closed.

*Prison allowed*

1986 ALL I. L. 1761

(SUPREME COURT)

*From Allahabad*

**B. B. MEERA AND H. N. DUTTA, JT.**

Civil Appeal No. 403 of 1985 (in which C.M.P. Nos. 30769 of 1984) (D). 10/4/1986

**Main Appellants' Interim Demand through L.Rs. Respondents**

(As) U.P. (Temporary) Control of Rent and Eviction Act (Act 1947), S. 7C — Application for interim working permission to deposit rent in Court — Month cannot have notice as landlord under S. 7C(4) — Question whether landlord has refused to accept rent paid lawfully — whether consent be required here — Notice is required to be given only when deposits are made in pursuance of permission

Section 7C gives a right to the tenant to deposit rent when a landlord refuses to accept any rent lawfully paid or due by the tenant. A tenant may allege that the landlord had refused to accept any rent lawfully paid or due. The tenant itself does not require the tenant to prove the question whether the landlord had refused to accept the rent paid lawfully or otherwise. *Sates (4) of S. 7C* contemplates of only one action after the deposit in pursuance of the permission granted to deposit for arrears of rent under that section. In the absence of any provision for sending notice the landlord before granting permission to the tenant, a notice cannot be sent to the landlord before the passing of the order. The respondents stoutly contended that no any deposit being made under when (1) the court shall cause a notice of the deposit to be served on the landlord and the amount of deposit may be withdrawn by the landlord on application made by him to the court in the behalf. If the tenant was to accord the permission to deposit the arrears of rent merely on being satisfied that the necessary obligation as required by S. 7C of the Act has been made viz. the landlord had refused to accept the rent lawfully tendered to him, he is not obligated to require a notice. The obligation made in the application was correct or not. (Para 18)

*Supreme Appeal No. 2557 of 1985 (D) 10/5/1986 (18)*

**EXPRESSO/1986/1871**

(B) U.P. (Temporary) Control of Rent and Eviction Act (T.C.R.E.A.) 1947, S. 7C — Eviction of tenant for default — Tenant depositing rent in court — Tenant must prove failure Court the failure of refusal by landlord when he sought to make payment

The tenant must establish before the court in which the suit for eviction has been filed the failure of refusal by the landlord when the payment was sought to be made to him. The mere fact that an application under S. 7C for permission to deposit the amount of rent has been allowed by the Magistrate will not involve the tenant from establishing before the court where the suit for eviction was filed, that the landlord had refused to accept the rent lawfully tendered. (Para 14)

Section 7C permits a tenant to deposit the amount of rent in court only under two conditions: (a) when the landlord refused to accept any rent lawfully paid to him by the tenant in respect of any accommodation; and (b) when any bona fide dispute or dispute has arisen as to the person who was entitled to receive any rent referred to in sub (a). If in respect of any accommodation, if the deposit of amount of rent was a valid deposit in accordance with the requirements of S. 7C, previously as well as when it is payment to the landlord and the tenant will be absolved from the liability of being evicted. But this should not only to accept the application and record particulars the tenant's deposit but merely in so far as the fact that necessary deposit in the application as required by S. 7C had been made the court trying the suit for eviction cannot be precluded from enquiring about the validity of the permission under S. 7C. (Para 15)

Mr. B. K. Jain and Mr. Chandra Kumar Advocate for Appellant; Mr. M. A. Khan, Mr. Manoj Bawari and Mr. U. S. Prasad Advocate for Respondent

**B. B. NISHAJI** — The only question for consideration in this appeal is stipulated as whether the deposit of amount of rent under S. 7C of the United Provinces (Temporary) Control of Rent and Eviction Act 1947 will save the tenant from the possibility of being evicted for non payment of rent.

1 The appellant is a tenant of the respondent on a monthly rent of Rs. 4.25 per

month. He fell into arrears of rent amounting to Rs. 38.75 for the period from 1st October 1984 to 31st December 1984. The tenant did not pay the arrears of rent in spite of the rental demand. Consequently, the landlord served upon the tenant a notice of demand. The tenant however failed to comply with the notification, hence he became a defaulter. The landlord thereafter served another notice on the tenant under S. 10 of the Tenants of Property Act. The tenant however neither vacated the premises nor cleared the arrears of rent. The landlord was therefore obliged to file a suit. He however claimed a sum of Rs. 175.00 as amount of rent for the period from 1st October 1984 to 31st February 1984 as the claim for rent for the remaining period being become barred by time. He also claimed a sum of Rs. 58.25 as damages for the period from 26 February 1984 to 23rd October 1984 as also possible past and future damages at the rate of Rs. 4.25 per month.

2 The claim was resisted by the tenant on the ground that he was not a defaulter inasmuch as whatever rent was tendered to the landlord he refused to accept the same and, therefore, he was constrained to deposit the amount that is a sum of Rs. 175.00 for the period from 1st September 1984 to 26th September 1984 in the Court under S. 7C of the Act. He also disputed the date of vacancy as alleged by the respondent landlord.

3 The next question came in the contention that the defendant became arrears from 1st January 1985 and not from 1984 as alleged by the plaintiff. As the deposit of amount of rent by the tenant under S. 7C was not a valid deposit, therefore, it could not absolve the liability of the tenant from arrears inasmuch as the defendant had failed to establish that the landlord had refused to accept the tender made by the tenant. Accordingly, the suit for recovery of amount of rent amounting to Rs. 175.00 and damages amounting to Rs. 58.25 was decreed with preference for and future interest at the rate of Rs. 4.25 per month.

4 On appeal the learned Additional Judge reversed the finding of the trial court and held that the tenant was not a defaulter in not depositing the deposit made by him under S. 7C of the Act and set aside the judgment and decree of the trial court for arrears. It was set aside

the High Court are with the judgment and does so at the latest appellate court although not out and exposed the charges of the trial court. The result has now come in appeal to the Court as stated earlier. In special leave.

§ One B.E. has appeared for the appellant has submitted that if the amount of rent had been deposited with permission of the court under § 7C of the Act it will be presumed that the landlord had refused to accept the rent tendered by the tenant. As a second fact in this argument it was contended that it was not open to the Court as a rule for evidence to go into the question of validity of the deposit made under § 7C. He produced a certified copy of the order of the Madras High Court dated 20th June 1967 allowing the application made by the tenant for permission to deposit the amount of rent. The order reads:

There is an application under § 7C(1) of the T.F. Act of 1947. The opposite party was served with the notice. No objection filed. The case falls under § 7C(1) the ingredients of which are made out. Hence the application must be allowed to deposit rent in the Court regularly under § 7C(1) and the opposite party/landlord is directed to withdraw the money.

On the strength of this order it was strenuously contended by the tenant that an deposit was not made by the landlord as per proceedings under § 7C of the Act and therefore it was not open to him to raise the question of validity of the order passed under § 7C.

§ The question that squarely falls for consideration is whether the order granting permission to the tenant to deposit the amount of rent in court is sacrosanct and cannot be challenged in a regular suit for eviction. Indeed the Madras before whom the application for permission was filed was not required to determine the rights and obligations of the tenant. All that he had to do was deposit when under § 7C that is to make a presumption the landlord refusing him that such deposit had been made. Section 7C so far as material provides:

7C. Deposit of Rent in Court. — (1) When a landlord refuses to accept any rent lawfully paid to him by a tenant in respect of any accommodation the tenant may in the prescribed manner deposit such rent and continue to deposit any subsequent rent which becomes due in respect of such accommodation unless the landlord or the tenant agrees by notice in writing to the tenant his willingness to accept

(2) Where any bona fide doubt as to if any rent comes as to the person who is entitled to receive any rent referred to in sub-s. (1) in respect of any accommodation the tenant may lawfully deposit the rent making the arrangements under which such deposit is made and may until such doubt has been removed or such deposit has been accepted by the decision of any competent Court or by settlement between the parties, continue to deposit in like manner the rent due and subsequently become due in respect of such building.

(3) The deposit referred to in sub-s. (1) or (2) shall be made in the Court, or the Mutual having jurisdiction in the area where the accommodation is situated.

(4) On any deposit being made under sub-s. (1) the Court shall cause another of the deposit to be served under landlord and the amount of deposit may be withdrawn by the landlord on application made by him to the Court as the tenant.

§ Section 7C gives a right to the tenant to deposit rent when a landlord refuses to accept any rent lawfully paid to him by the tenant. A tenant may allege that the landlord had refused to accept any rent lawfully paid to him. The tenant did not deny that he failed to go into the question whether the landlord had refused to accept the rent paid lawfully or otherwise. We fail to understand how, as the learned Madras observed, the opposite party was served with a notice dated 10/11/67 under § 7C and complains of not entering into the deposit in pursuance of the permission granted to deposit the amount of rent under that section. In the absence of any provision for seeking recourse to the landlord before granting permission to the tenant, we fail to understand how a notice was sent to the landlord before the passing of the order. The rules clearly contemplate that any deposit being made under sub-s. (1) the court shall cause a notice of the deposit to be served on the landlord and the amount of deposit may be withdrawn by the landlord on application made by him to the court as the tenant. If the Madras was to accord the permission to deposit the amount of rent merely on being satisfied that the necessary steps had been required by § 7C of the Act has been made, yet the landlord had refused to accept the rent lawfully tendered to him, he was not obliged to enquire whether the alternative made in the application was correct or not.



9. The issue of whether the tenant is to deposit the amount of rent is dealt with under two conditions. In what the landlord refused to accept any rent lawfully paid by him by the tenant in respect of an accommodation, and in what he has or has not done or done his utmost as to the person who was entitled to receive any rent referred to in sub c. (1) in respect of an accommodation. (i) the deposit of amount of rent was a valid deposit in accordance with the requirements of S. 7C, certainly a valid deposit as pursuant to the landlord and the tenant not be absorbed from the liability of being a rent. But this Maud had said to accept the application and amount pursuant to the tenant's deposit the amount of rent made on the basis that necessary allegations in the application as required by S. 7C had been made, the court saying that the fact that the tenant had been provided from enquiry about the validity of the permission under S. 7C.

10. It was not submitted for the appellant that the first appellate court had recorded a finding of fact believing the statement of the tenant that the landlord had refused to accept the rent was recorded to him and also refused to accept the amount by money order and the finding could not have been an order by the High Court in appeal appeal. We are afraid this contention has no substance. The finding, recorded by the first appellate court, it hardly needs to say and conjecture, that under the basis of the material on record. We would do so better that quote the observations made by the first appellate court:

The appellant having submitted deposit of rent amount under S. 7C, and the court having accepted the deposit holding the requirement of the section to have been made out, and permitting the appellant to resume depositing rent in future also, permit that the deposit has to be treated as valid and the burden lay on the plaintiff to show that the money proceedings under S. 7C were invalid and the Mutual had submitted no contradiction to overturn the application and accept the deposit. The observations of the court also indicate that the rent must have been received by the defendant and might have been refused by the plaintiff. Whether the defendant had applied for possession of the shop or the same plaintiff had applied application before the Rent Control and Eviction Officer for his premises were overruled and allotment was made in favour of the defendant. This was found to cause injury to the plaintiff and he might have refused to accept the rent on that ground.

11. Obviously the first appellate court was of the opinion that once permission had been granted by the Mutual to the tenant to deposit amount of rent it would be presumed that the permission was a valid and under S. 7C, and therefore the court had ordered its trial and a fact existed was various and conjecture.

12. The first court had accepted the evidence of the defendant who sought to the tender of rent on the ground that he was an untrustworthy. According to the defendant he had gone to pay the amount of rent paid to bringing the application under S. 7C and that he had been ordered the amount of amount by hand to the plaintiff in the presence of plaintiff's son and the plaintiff had refused to accept it. He further deposed that the rent was tendered by money order also but the plaintiff had refused to accept it. The defendant did not submit the postal receipts to the plaintiff nor did he produce the plaintiff's son before whom he made tender which was refused by the plaintiff. Under the evidence was filed in the present case that could not be taken into consideration by the court, by assuming the fact of some other case. The first appellate court had however relied upon the postal money order receipts by looking into the records of the proceedings under S. 7C. The High Court in the circumstances was fully justified in reversing the finding recorded by the first appellate court as it was stated in law.

13. It may look hard that the tenant who had deposited the rent in court under S. 7C, that he be treated as the requirement of S. 7C had not been established but there is no help in the amount once the only evidence is the deposition of the tenant which the trial court did not rely upon and even the first appellate court did not categorically say that it believed the deposition of the defendant. The law in our opinion is clear that the tenant must establish before the court in which the case for eviction has been filed, the fact of refusal by the landlord when the payment was sought to be made to him. The mere fact that an application under S. 7C for permission to deposit the amount of rent has been allowed by the Mutual without showing that it had been submitted before the court where the case for eviction was filed that the landlord had refused to accept the rent lawfully tendered.

14. For the reasons given above we do not find the order made by a majority prior to

in agreement with the proponent of the High Court. The appeal is accordingly dismissed, but that is incorrect inasmuch as before this department of the appeal the case order stands vacated and no separate order is needed. The civil proceedings pending is disposed of accordingly.

Appeal dismissed

1986-111, L. J. 168

= AER 1986 Supreme Court 590

(Phase 1) 1782; M-Cal W. H. 475

D. F. MADON AND B. C. RAY, JJ.

Criminal Appeal No. 182 of 1985 D. F. 11-3 1986

+ Lalla v. State of West Bengal, Appellant v. State of West Bengal, Respondent

(A) Penal Code (46 of 1860, Sec. 394, 34, 35) — Offence under — Police statement of case eyewitness recorded after 56 days — Satisfactory explanation was given for delay in recording statement — Sessions Judge and High Court considered and accepted it — Appellate Court declined to interfere with reasons finding of lower Court (Criminal P.C. 12 of 1973, S. 362) (Para 5)

(B) Penal Code (46 of 1860, Sec. 394, 34, 35) — Case under — Appellate Court considered police statement and recorded two persons in civil manner and found the facts with a view to cause evidence of witness to disappear — Plea for reduction of sentence in the period already undergone rejected (Para 6)

Case Related Chronological Para AER 1979 SC 348 (1979-4 SCC 388) 1979 Cr. L.J. 190

MADON, J. — The Appellant along with some of his co-accused was arrested and imprisoned by the Additional Sessions Judge, The District Judge under S. 304 read with S. 34 of the Indian Penal Code to imprisonment for life. The Appellant is also the same co-accused were also convicted and sentenced under S. 304 read with S. 34 of the Indian Penal Code to rigorous imprisonment for six years. Both these sentences were dropped in due consequence. The appeal filed by the Appellant is also for an account were dismissed by the Calcutta High Court.

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2 The main evidence against the appellant consisted of the statement of Hantha Das, who was the finding each witness examined by the prosecution. At the hearing of the Appeal some minor discrepancies of the evidence of the said one witness were sought to be relied upon by learned Counsel for the Appellant. All the points sought to be made by learned counsel have been considered by the learned Additional Sessions Judge and by this Judge have been confirmed by the High Court. The minor discrepancies noted apart by learned Counsel hardly require noticing because they do not in any manner affect the credibility of the said witness.

3 What was however vehemently urged by learned Counsel for the Appellant was that there was a delay of about 56 days in recording the police statement of the said witness and therefore the evidence should be rejected. In support of the submission a decision of this Court in State of Orissa v. Brahmananda Panda (1974) 4 SCC 388 (AIR 1974 SC 348) was sought to be relied upon in which the finding of the said eye witness, whose police statement was recorded after a day and a half though accepted by the Additional Sessions Judge, was rejected by the High Court and the amendment proposed and the Court had come to the Court in appeal against the order of acquittal. That was a case which was upon its own facts. Further, in that case the High Court had given detailed reasons for rejecting the evidence of the particular eyewitness. Here the dispute is the matter. In the evidence led by the prosecution a clear and satisfactory explanation has been given why the statement of Hantha Das was recorded after the lapse of about 56 days. The learned Additional Sessions Judge has carefully considered the explanation and accepted it and so the High Court and we are no cause to interfere with the concurrent finding.

4 Lastly a plea was made, before us that the sentence of the Appellant should be reduced to the period already undergone. This plea does not deserve any consideration. There was a pre-planned murder, in which a man, born carrying 180 sticks of the war was hit at about midnight. Later in the night play and the doors of the house and a Khakhi and two others who were in the house were murdered and killed in a small room and their bodies were found in a room to cause evidence of the crime committed by the Appellant and the other accused, in a murder.

5 In the result the Appeal fails and is dismissed.

Appeal dismissed